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STATE OF NEW YORK.

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PUBLIC PAPERS

OF

GROVER CLEVELAND,

GOVERNOR.

1884.

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1884.



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ANNUAL MESSAGE.

STATE OF NEW YORK.

*EXECUTIVE CHAMBER,*  
ALBANY, *January 1, 1884.* }

*To the Legislature:*

In transmitting a statement of the condition of the State, and recommending such matters for legislative action as are deemed expedient, I believe it to be entirely proper at the outset, to direct attention to the fact that the growth and progress of the State in every direction, and the needs of the people, call for patient and intelligent action on the part of their representatives in the Legislature. Every one who has assumed any share of responsibility in this branch of the government should enter upon the discharge of his duties, fully appreciating his trust, and with an unwavering determination to faithfully serve the State.

It is suggested that frequent and unnecessary recesses, taken during the session of the Legislature, not only result in a great waste of time, but by interruption of thought and effort, tend to loose, careless and ill-advised legislative action.

Another evil which has a most pernicious influence on

legislation, is the introduction and consideration of bills purely local in their character, affecting only special interests, and which ought not upon any pretext to be permitted to incumber the statutes of the State. Every consideration of expediency, as well as the language and evident intent of the Constitution, dictate the exclusion of such matters from legislative consideration. The powers of Boards of Supervisors and other local authorities have been enlarged, for the express purpose of permitting them to deal intelligently and properly with such subjects. But notwithstanding this, bills are introduced authorizing the building and repairing of bridges and highways, the erection of engine houses and soldiers' monuments, the establishment of libraries, the regulation or purchase of cemeteries, and other things of a like nature. In many cases no better excuse exists for the presentation of such bills than the dignity and force which is supposed to be gained for their objects by legal enactment, the saving of expense and trouble to those interested in their purposes, and the local notoriety and popularity sought by the legislators having them in charge. Their consideration retards the business of the session and occupies time which should be devoted to better purposes. And this is not the worst result that may follow in their train. Such measures, there is ground to suspect, are frequently made the means of securing, by a promise of aid in their passage, the votes of those who introduce them, in favor of other and more vicious legislation.

The crowding of a large amount of business into the closing hours of the session, gives opportunity in the haste and confusion which ensue, for the passage of bad and improvident laws, perhaps to the exclusion of measures of importance and value.

The postponement of legislation until the last of the session also results in leaving a large number of bills in the hands of the Governor at the time of final adjournment. By the terms of the Constitution such bills cannot become laws unless they are approved by the executive within thirty days after the adjournment; there is no opportunity for the Legislature to review the disapproval of the Governor, and he has the absolute power to determine which shall become laws and which shall fail. This arbitrary executive control of legislation should be guarded against by submitting the same to the Governor, as far as possible, in time to permit the Legislature to review his action thereon if unfavorable.

At the time of the adjournment of the last session, three hundred and fifty-seven bills had been signed by the Governor, and two hundred and forty-nine remained subject to his action.

#### FINANCES.

The total debt of the State on the thirtieth of September last, after deducting the amount in the Sinking Fund to meet the same, was \$5,978,301.81, being a reduction of debt during the year of \$407,054.49. This debt, with the exception of a balance of \$3,000 of the bounty debt which remains unclaimed, and \$122,694.87, the amount necessary to yield at six per cent. interest the sum required to pay the annuities to Indians, consists of the stock of the State issued for canal construction, bearing six per cent. interest, and redeemable in the years 1887, 1891, 1892, and 1893.

The statement of the condition of the financial department of the State government, for the details of which you are referred to the annual report of the Comptroller, shows sufficient funds in the treasury to meet all obligations, and an available surplus at the beginning of the present fiscal

year of \$1,249,567.97. This surplus arises from the veto by the Governor of items of appropriation after the adoption of the tax levy, the excess of receipts from various sources over estimates, and unexpended balances of appropriations.

The amount received by the Treasurer from taxes on corporations, during the year, was \$1,935,179.31, being an increase over the preceding year of \$395,495.04; but of this amount \$351,183.75 was on account of taxes due in 1880, and paid under recent decisions of the courts.

In consequence of the increase in the valuation of the taxable property of the State, the tax rate of three and one-quarter mills on each dollar, fixed by the last Legislature will raise \$9,334,836.31, an amount considerably in excess of the actual needs of government. The causes which contributed to slightly increase the rate of taxation for the present year, were the adoption of the policy of reserving \$1,000,000 of the surplus then in the treasury to meet current expenses, and the adjustment of the canal finances to the system under which these works are supported by a direct tax upon the people, which required that there should be raised in the present fiscal year, for the Canal Debt Sinking Fund, an amount that otherwise would have been distributed over two years.

Basing the estimates for the support of government on the cost of the present year, it is evident that a generous appropriation can be made for continuing work on the New Capitol, and that by reason of the increased valuation and the lessening of the canal tax, an extraordinary reduction in the tax rate can still be made for the coming year. In fact, the observance of due care in the appropriation of public funds by the present Legislature, and the

exercise of such economy as sound public policy dictates, will reduce the tax levy for the coming year to a point which has not been reached in twenty-five years, and effect a reduction of more than three millions of dollars from the amount raised by direct taxation last year.

#### TAXATION.

The subject of taxation still remains a vexed question; and the injustice and discrimination apparent in our laws on this subject, as well as the methods of their execution, call loudly for relief. There is no object so worthy of the care and attention of the Legislature as this. Strict economy in the management of State affairs, by their agents, should furnish the people a good government at the least possible cost. This is common honesty. But to see to it that this cost is fairly and justly distributed, and the burden equally borne by those who have no peaceful redress if the State is unjust, is the best attribute of sovereignty and the highest duty to the citizen. The recognition of this duty characterizes a beneficent government; but its repudiation marks the oppression of tyrannical power. The taxpayer need not wait till his burden is greater than he can bear for just cause of complaint. However small his tax, he may reasonably protest, if it represents more than his share of the public burden, and the State neglects all effort to apply a remedy.

The tendency of our prosperity is in the direction of the accumulation of immense fortunes, largely invested in personal property; and yet its aggregate valuation, as fixed for the purpose of taxation, is constantly decreased, while that of real estate is increased. For the year 1882, the valuation of personal property subject to taxation was determined at \$351,021,189, and real estate at \$2,432,661,379. In 1883 the

assessed valuation of personal property was fixed at \$315,039,085, and real estate \$2,557,218,240.

The present law permits in the case of personal property, the indebtedness of its possessor to be deducted from its value, and allows no such deduction in favor of real estate, though it be represented by a mortgage which is a specific lien upon such real estate. Personal property, in need more than any other of the protection of the government, when discovered, escapes taxation to the extent of its owner's indebtedness, though such indebtedness is based upon the ordinary credit in the transaction of business or is fictitious, and manufactured for the temporary purpose of evading taxation. But real property, the existence of which cannot be concealed, is, in contemplation of the law, taxed according to its full valuation, though the incumbrance upon it easily divests the owner of his title, though the interest and perhaps part of the principal must, as well as the tax, annually be met, and though if sold the amount due upon this lien must always be deducted from any sum agreed upon as the price of the land.

This statement does not necessarily lead to a deduction of the amount of any incumbrance upon real estate from its valuation for the purpose of taxation; but it does suggest that both real and personal property should be placed upon the same footing, by abolishing, in all cases, any deduction for debts. This amendment, with some others regulating the manner in which local assessors should perform their duties, would do much towards ridding our present system of its imperfections.

If measures more radical in their nature, having for their object the exaction of taxes which are justly due, should be deemed wise, I hope their passage will not be prevented

under the specious pretext that the means proposed are inquisitorial and contrary to the spirit of our institutions. The object is to preserve the honor of the State in its dealings with the citizen, to prevent the rich, by shirking taxation, from adding to the burdens of the poor, and to relieve the landholder from unjust discrimination. The spirit of our institutions dictates that this endeavor should be pursued, in a manner free from all demagogism, but with the determination to use every necessary means to accomplish the result.

#### THE CANALS.

An analysis of the expenditures by the Superintendent of Public Works, shows that of the aggregate cost of repairs and maintenance of the canals for the year ending September 30, 1883, the sum of \$240,535.54 was expended during the four months from October 1, 1882, to February 1, 1883, and \$349,319.36 for the remainder of the year under the administration of the present Superintendent. This latter period comprised all but two months of the season of navigation. For the fiscal year, which begins October 1, 1884, provision must be made by tax to meet the cost of maintenance, which is estimated at \$650,000, in addition to the required contribution of \$450,000 to the canal debt sinking fund, and \$500,310 for interest on the canal debt. This total of \$1,600,310 can be met by a tax of fifty-seven one hundredths of a mill, the canal tax for the current year being one and forty-seven thousandths mills.

Navigation during the year has been uninterrupted from the opening until the close of the canals, with but two exceptions of a few hours duration; the standard depth of water has been fully maintained, and the general good navigable condition of the canals is evidenced by the

amount of tonnage transported, and the regularity and speed with which boats have made their trips.

The exhibit of the canal business for the season just closed, in my judgment, fully justifies the policy adopted by the people of relieving this commerce of the burden of tolls. It was unfortunate that in the first year of free canals, the one when most attention would be given the subject and most interest manifested in its operation, the season of navigation should be very materially shortened by a late opening and early closing on account of the weather. But notwithstanding the loss of thirty-three days, as compared with the year previous, or about one-seventh of the average period of navigation, the tonnage for the year was 5,775,631 tons, an increase over last year of 324,350 tons. Comparing the tonnage for the two seasons on the basis that they were of the same duration, the excess in favor of this year is 823,371 tons.

Remarkable proof of the increased commerce attracted to these water-ways by the abolition of tolls is found in the fact that the shipments of grain from Buffalo by canal this year aggregated 42,350,916 bushels against 29,439,688 bushels last year; and the statistics which will be transmitted by the Superintendent of Public Works, will exhibit like increase in the other freights which comprise the great bulk of the canal traffic.

These figures assure those interested in canal navigation, that the liberal policy adopted by the State will make reasonably certain a continuance of employment and opportunities for the capital and labor of our citizens. They also give promise to the people, who have assumed the expense of maintaining the canals, of a full return, in the benefits which must accrue from securing to our State a

traffic of such proportions as to add materially to its business and wealth.

Pursuant to a policy which for a number of years seems to have prevailed, no improvements have been made upon the canals, and expenditures have, in the main, been limited to the cost of superintendence, and such repairs as were absolutely necessary to preserve navigation. That the banks, prism and structures are now in sufficiently good condition for present purposes I have no doubt. But I agree with the Superintendent of Public Works, that it is not wise to rely wholly upon a continuance of the good fortune which has so long attended the canals; and without hesitation, I concur in his proposition to take measures to inaugurate a system of such constant and gradual repairs as ordinary prudence demands.

#### PUBLIC EDUCATION.

The Superintendent of Public Instruction furnishes the following statement concerning the public schools for the year ending September 30, 1883:

Total receipts, including balance on hand	
October 1, 1882 .. . . . .	\$13,206,065 14
Total expenditures .. . . . .	11,858,594 09
Amount paid for teachers' wages .. . . . .	8,265,452 83
Amount paid for school houses, repairs, furniture, etc .. . . . .	1,925,671 27
Estimated value of school houses and sites ..	31,011,211 00
Number of teachers employed during legal term of school .. . . . .	21,122
Number of teachers employed during any portion of the year .. . . . .	31,570
Number of children attending public schools,	1,041,089
Number attending normal schools .. . . . .	6,270
Number of volumes in school district libraries,	701,675
Number of persons in the State between the ages of five and twenty-one .. . . . .	1,681,500

There seems to have been, for a number of years, a steady decrease in the number of books contained in school district libraries. In 1860 the number reported was 1,286,536; in 1881, 707,155; in 1882, 705,812, and now 701,675. If it is proposed to continue the advantage of these libraries, it is quite evident that there should be a change in the extent and manner of their supply, or in the means of their preservation.

The Regents of the University report that there are twenty-four literary and thirteen medical colleges connected with the University of the State. Of these, two have been chartered during the past year, to wit: Canisius College, of Buffalo, and Niagara University, at Suspension Bridge.

There are under the visitation of the Regents 277 academies and academical departments of Union Schools, comprising about 36,000 scholars and 1,400 teachers.

The instruction of common school teachers has been carried on during the past year in ninety-five academical institutions, in which 1,611 scholars have been trained. These classes are under the care of an inspector appointed by the Regents.

The removal of the library building has necessitated the arrangement of the State Library in temporary quarters in the New Capitol.

Arrangements for the removal of the State Museum to the State Hall as soon as it is vacated have been made. The printing of the Paleontology, allowed by the last Legislature, has been resumed by the Regents.

#### BANKS.

Eight new banks of discount were organized during the year, and one failed, leaving the total number eighty-four,

the condition of which on the 1st day of October, 1883, was reported as follows:

		Increase during the year.
Resources .....	\$160,716,393	\$38,152,933
Capital .....	21,761,700	2,956,000
Surplus and profits .....	11,146,418	1,488,716
Due depositors .....	113,914,963	31,863,983
Other liabilities .....	13,893,312	1,844,234

Of the increase in capital, \$1,300,000 was the result of the conversion of banks from the National to the State system.

On the first day of July last, 127 savings banks reported to the Superintendent of the Banking Department, but of this number, twelve transact no business and have but a nominal existence. During the year one new savings institution was organized, and one closed after paying its depositors and creditors in full. The condition of these savings banks on the day named was as follows:

		Increase during the year.
Resources .....	\$483,662,008 15	\$23,538,425 49
Due depositors .....	420,831,007 38	20,087,168 96
Surplus on market value ..	62,114,693 47	2,957,654 24
Other liabilities .....	716,307 30	493,602 30
Number of depositors.....	1,119,512	52,994

The immense financial transactions of these institutions, intended to be semi-charitable in their nature, shown in the fact that during the year the deposits received from and withdrawn by their million of depositors, aggregated \$304,592,254.95, exclusive of the interest credited, calls for the exercise of the utmost care that the safeguards which surround them and which have given confidence to those who intrust their earnings to their keeping, should be jealously protected.

The reports made July first by the sixteen loan, mortgage, guaranty and indemnity companies, doing business in this State, exhibit the following condition:

		Increase in number.
Resources .....	\$160,137,764 04	\$20,379,229 90
Capital paid in .....	13,537,000 83	957,500 00
Surplus and profits .....	12,244,412 42	2,390,035 64
Due depositors .....	125,283,170 17	20,394,985 01
Other liabilities .....	9,229,350 92	*3,207,130 45

Sixteen institutions for the safe-keeping and guaranteeing of personal property, with a capital aggregating \$2,886,900, were under the supervision of the Banking Department on the first day of October.

In my last annual message to the Legislature I took occasion to say:

"State supervision of banks is worse than useless unless it is thorough and effective. Under the law, as it now stands, the Superintendent of the Banking Department must cause an examination to be made of these institutions only when, in his opinion, there is good reason to suspect an unsound condition or false reports. It would seem that the solvency of the banks and protection of depositors would be better assured, if one or more examinations, in each year, were made compulsory on the Department."

The evidence accumulates to prove the necessity for such an enactment as was then suggested, and which will be duly submitted for your consideration.

## INSURANCE.

The statistics furnished by the Insurance Department show that our citizens have suffered no losses during the year, by failure of any of the companies doing business under its supervision.

\* Decrease

On the 1st day of July, 1883 there were doing business in this State 147 joint-stock fire insurance companies, with total assets of \$169,983,924.56, including a net surplus of \$51,978,273.33; fifteen marine insurance companies with total assets of \$23,253,860.86, including a net surplus of \$4,440,141.59; twenty-nine life insurance companies with total assets of \$449,602,347.17, including surplus as regards policy-holders of \$76,751,390.73, and seven casualty insurance companies with total assets of \$3,617,413.41, and a net surplus of \$1,331,038.81. There were 131 co-operative insurance associations doing business in this State January 1, 1883. Of these 119 were New York State companies and twelve were organized in other States; the number of certificates in force issued by these associations was 443,296. During the year 1882, 119,385 certificates were written and 51,381 terminated. The losses paid amounted to \$7,430,856.51.

The amount of securities on deposit with the Insurance Department July 1, 1883, for the protection of policy-holders insured by the various insurance companies transacting business in this State was in the aggregate \$13,488,347.68, as follows:

New York State life insurance companies.....	\$2,662,508	75
New York casualty insurance companies.....	301,567	73
New York fire insurance companies.....	1,693,000	00
Fire insurance companies of other States.....	100	00
Foreign insurance companies.....	8,831,171	20

Under the provisions of the law passed April 2, 1883, to regulate the formation and conduct of co-operative insurance associations, by placing them under the superintendence of the Insurance Department, thirteen of such associations have been incorporated, and five organized in other States

have been admitted to transact business in this State. By the operation of the new law the standard of this class of insurance has been materially elevated. A number of fraudulent and mismanaged societies have been driven from business, and those honestly and prudently conducted have acquired a better place in the confidence of the community.

A remarkable saving in expense has been effected in this department during the past year under the present administration.

On the 30th day of April, 1883, there were thirty clerks employed in the department, whose annual salaries amounted in the aggregate to \$48,650, together with an attorney at a salary of \$4,000, while at the close of the fiscal year, September thirtieth, there were but seventeen clerks employed, at an aggregate annual expense of \$28,150, and the services of the attorney had been dispensed with as unnecessary. The Superintendent feels confident of his ability to still further reduce these expenses without, in any manner, diminishing the efficiency of the department. As a result of this reduction, the fire, marine and life insurance companies, and the co-operative societies organized under the laws of this State, have been notified that no fees, taxes or dues will be imposed upon them this year by the department, the statutory fees collected from the companies of other States and countries being sufficient for its maintenance.

#### NATIONAL GUARD.

The organization and efficiency of the military department of the State are in a very satisfactory condition. The National Guard consists of four divisions, eight brigades, seven battalions of artillery, fifteen regiments, one battalion and forty separate companies. The whole number of officers

and enlisted men on the 30th day of September, 1883, was 11,568, notwithstanding that under the provisions of the new Military Code all regimental bands, aggregating 554 members, have been dropped from the rolls, and many enlisted men, physically incapable of doing military duty, have been discharged from the service.

During the last year the Forty-second Separate Company, located at Syracuse, has been formally disbanded, and one new company has been organized in Elmira.

The latest reports show that recruiting is steadily progressing. If the existing organizations should be filled to the maximum strength allowed, the aggregate of officers and men would exceed 18,000, while the whole number permitted by the Code is limited to 15,000. For this reason, and in view of the fact that the funds at the disposal of the department are necessary for present wants, many applications for the formation of new companies and the readmission of organizations heretofore disbanded, have been refused.

The Military Code passed by the last Legislature prescribed service uniforms to be furnished by the State to the National Guard. So far as they have been issued they have proved serviceable. They are neat in appearance and acceptable to the troops. But the lack of an appropriation for that purpose has rendered it impossible to furnish the new uniforms except to a few of the most needy organizations. I recommend that the present Legislature make provision to furnish this uniform to those yet unprovided for, in the belief that after the Guard is once fully equipped the expense of its maintenance in this respect will be less than under the previous system.

The State Camp of Instruction inaugurated by my predecessor in 1882 seemed productive of such good results that

I ordered a similar camp, in the summer of 1883. It was opened on the sixteenth day of June and continued to the twenty-eighth day of July. Six regiments and nine separate companies were in camp one week each. The number of the Guard thus allowed the advantage of this important feature of military instruction was 3,515, exceeding by more than one-third those in camp the previous year.

It is quite apparent that the policy which has reduced the number of the National Guard, should be supplemented by every reasonable effort to make it reliable and efficient. Investigation and personal inspection have satisfied me that nothing tends more in that direction than the opportunities afforded by the Camp of Instruction.

The ground, thus far occupied near Peekskill, is admirably adapted to the purpose in every respect, and considerable money of the State has already been expended in fitting it for use. It comprises about one hundred acres, and is now held by the State under a lease which expires May 1, 1885, at an annual rent of \$1,000. The privilege is reserved to the State to purchase the property at any time before the expiration of the lease for the sum of \$13,000. This price is regarded as reasonable, and I recommend that the purchase be made by the State, with a view of permanently establishing the Camp of Instruction as an element of military education.

The last Legislature provided for the erection of an armory in each of the cities of New York, Brooklyn and Troy, and in the village of Flushing.

Some amendments to the Military Code, which has been in operation since last April, are deemed desirable, and will at the proper time be submitted for the action of the Legislature.

## STATE PRISONS.

From a statement made by the Superintendent of State Prisons, it appears that on the 30th day of September, 1883, there were confined in Auburn prison 882 convicts; in Sing Sing 1,462, and in Clinton 484, making a total of 2,828; being less than for a number of previous years. There were 144 inmates of the State Asylum for Insane Criminals, nine of whom were women.

The earnings and expenditures of these prisons during the last fiscal year, were as follows:

## AUBURN PRISON.

Earnings.....	\$125,280 30
Expenditures.....	119,857 42
Surplus.....	\$5,422 88

## SING SING.

Earnings.....	\$237,238 48
Expenditures.....	183,219 73
Surplus.....	54,018 75
	\$59,441 63

## CLINTON.

Earnings .....	\$44,542 80
Expenditures .....	94,878 20
Deficiency .....	50,335 40
Balance surplus.....	\$9,106 23

Two hundred convicts have been transferred, during the year, from Sing Sing to Auburn prison.

I learn, as the result of inquiries instituted on the subject, that on the 1st day of December, 1883, more than 15,000 men, women and children were confined in the prisons,

houses of refuge, penitentiaries, reformatories, jails and protectories within the State. Of course, all of these are not convicted of crime, but the figures suggest a large convict population, the care and management of which present important and intricate questions.

Of the number above mentioned 507 were confined in the State Reformatory at Elmira, upon conviction of felonies. Such convicts are required to be between the ages of sixteen and thirty years. No term of imprisonment is fixed by the sentence, but they cannot be detained longer than the maximum time for which they might have been sent to prison. Within this limit, they may be imprisoned until discharged by the rules of the institution.

The Board of Managers may transfer "temporarily" to either of the State prisons, any inmate who, subsequent to his committal to the Reformatory, shall be shown to have been at the time of his conviction, more than thirty years of age, or to have been previously convicted of crime or any apparently incorrigible prisoner whose presence in the Reformatory appears to be seriously detrimental to the well being of the institution. If after such transfer he is not recalled by the managers, he must remain in State prison during the balance of the longest sentence that might have originally been imposed upon him. The law allowing a reduction of the time of imprisonment for good conduct is not applicable to his case.

On application to the prison at Auburn, I learn that since the Reformatory was established, and up to the 6th day of December, 1883, seventy-five persons who had originally been sent to the Reformatory were transferred, under the conditions above stated, to the Auburn State prison. Of these, fifteen have been allowed to serve in prison the longest

sentence that could have been pronounced for their crime; one was discharged by order of the managers of the Reformatory; one was transferred to Clinton prison; four were transferred to the Asylum for Insane Criminals (one of whom was subsequently returned to prison); two died; one was recalled to the Reformatory, and fifty-two still remained in the prison. How many of these were sent to the State prison by the managers because, in their view, they were "apparently incorrigible prisoners, whose presence in the Reformatory appears to be seriously detrimental to the well being of the institution," is not reported; but it is safe to say that a large proportion were consigned to prison on that allegation. The prisoner thus transferred, who was sentenced to the Reformatory, in mercy, to avoid the stigma of a sentence to prison, and for purposes of reform, because he had maintained theretofore a good reputation and standing in society, may meet at the door of the prison his accomplice in the crime committed, who, having made no pretense of character or respectability, has served the sentence to prison pronounced upon him by the court. The worst and most hardened criminals, if originally sent to prison, earn, by good conduct, a considerable reduction of imprisonment, but the convict from the Reformatory has no such thing to hope or strive for. In my opinion there should be no power vested in the Board of Managers of this institution to send persons committed to their care to the State prisons; and if convicts are sentenced to the Reformatory, the courts should exercise the greatest care to be satisfied that they are promising subjects for reformatory efforts, and fix a term beyond which they cannot be confined. A release before the time thus fixed might well be offered as a reward for improvement, reform or good conduct.

The law in relation to the reduction, for good behavior, of the terms of convicts in State prison, should be made more plain and definite, and the power of the prison authorities to refuse such reduction be more exactly defined.

At the last election there was submitted to the people of the State, for the expression of their opinion thereon, a proposition to abolish contract labor from the State prisons. Quite a large majority of the votes cast upon this question were in favor of the proposition ; and the present Legislature will be expected to consider the subject. It should be approached with the utmost care and deliberation. The opportunity of the workingman should not be injuriously affected by the labor of convicts in the prisons ; nor, unless to avoid such a danger or other serious abuses, should the self-supporting feature of the prisons be lost and the expense of their maintenance added to the burden of the taxpayers.

#### CHARITABLE INSTITUTIONS.

The following information is furnished by the State Board of Charities and the Commissioner in Lunacy :

The value of the property held by the various charitable institutions on the first day of October, 1883, was \$42,935,360.04, of which \$35,415,555.45 was in real estate, and \$7,519,804.59 in personal property.

The receipts of all these institutions for the year ending September 30, 1883, were as follows :

State institutions.....	\$909,221 52
County and city institutions .....	2,363,720 42
Incorporated benevolent institutions .....	7,157,002 15
	<hr/>
	\$10,429,944 09

Of this sum, \$719,753.98 was derived from the State, \$4,876,519.37 from cities and counties, and \$1,520,571.15 from legacies and donations.

The expenditures during the year were as follows:

By State institutions.....	\$1,435,242 62
By county and city institutions .....	2,363,720 42
By incorporated benevolent institutions .....	6,492,431 04
	<hr/>
	\$10,291,394 08

The number of insane in the various institutions on the 30th day of September, 1883, was 11,270, distributed as follows:

State Lunatic Asylum at Utica.....	600
Hudson River State Hospital .....	306
State Homœopathic Asylum.....	260
Buffalo State Asylum .....	329
Willard Asylum (chronic insane).....	1,740
Binghamton Asylum (chronic insane).....	412
County poor-houses and asylums .....	1,867
City alms-houses and asylums .....	5,010
In private asylums.....	493
Asylum for Insane Criminals .....	144
Asylum for Insane Emigrants.....	109
	<hr/>
	11,270

Of this number, 5,015 were males and 6,255 females. The total given above is 827 in excess of the insane reported for the year ending September 30, 1882.

The number of State paupers under care on the 1st day of October, 1882, was 163. There were 1,426 committed during the year ending September 30, 1883. The number discharged as able to provide for themselves was 504; adopted into families 4; absconded 67; transferred to insane and other asylums 9; furnished with transportation to their homes or places where they were legally settled in other States or countries 784; died 40.

There remained on the 1st day of October, 1883, under care

189. Of these 158 were in the State Alms-houses, twenty-eight in State Insane asylums, and three in Orphan asylums.

During the year ending September 30, 1883, sixty-nine crippled, blind, lunatic and otherwise infirm and helpless alien paupers found in the various hospitals, asylums, poor-houses and alms-houses of the State were sent to their respective homes in various countries of Europe, at an expense of \$1,603.12. In every instance these persons were without friends in this country, and their infirmities and disabilities were found to have existed before they left their homes. It was evident that they were sent here with the intention on the part of those by whom they were shipped, of escaping the expense of their care and maintenance. Eighteen of these helpless paupers, of whom several were "assisted immigrants," were sent by counties and towns in other countries, sixteen by organized societies, three by guardians, and twenty-seven by relatives and friends.

Some attention given to the system of supervision of the charitable and reformatory institutions of the State convinces me that it might be much improved.

The State Board of Charities is vested with the power of visitation and examination, and is required to report the condition of the institutions visited, which include all the charitable and correctional institutions in the State.

The State Commissioner in Lunacy is authorized and directed to examine into and report annually to the Legislature, the condition of the insane and idiotic in the State, and the management and conduct of the asylums and institutions for their care and treatment.

The boards of trustees or managers of all the charitable and correctional institutions have generally the control of their business and internal management.

The superintendents hold their positions under the boards of trustees, and are supposed to devote their attention to the care of the inmates of the institutions.

The Board of Charities is composed of most estimable men and women who receive no compensation for their services, but devote all the time to the performance of their duties that can reasonably be expected, and their labors are undeniably valuable. Their powers are advisory in their nature, and their recommendations are often unheeded.

The powers and duties of the State Commissioner in Lunacy, so far as the institutions for the insane and idiotic are concerned, are nearly identical with those of the Board of Charities ; and unfortunate questions have arisen from this condition.

The visitations of the Board of Charities, as well as the Commissioner in Lunacy, are necessarily infrequent, and the information they gain of the actual management of the institutions quite general and imperfect.

The local boards of trustees gratuitously perform the duties they have assumed, and while not unfaithful, can hardly be expected to devote time very constantly to the details of management. They very naturally gain much of their information from the statements of the superintendent in charge.

A recent investigation by a committee of the managers of the Western House of Refuge, where delinquent boys and girls are sent for reform and instruction, satisfied the committee that for months the by-laws and regulations of the institution relating to the punishment of inmates had been violated ; that the boys there confined had been beaten, abused and assaulted in the most outrageous manner, by the

attendants and subordinates in charge, and the funds of the institution had not been sufficiently protected.

It is assumed that neither the Board of Charities nor the local board of trustees had any knowledge of these things until they were exposed by the investigation ; and the superintendent testified that he was entirely ignorant of the instances of cruelty established by the testimony.

A system which permits this condition of things is evidently defective.

The time will never come when the humane sentiment of the people will approve the cruel treatment or the neglect of the unfortunate, or even criminal, inmates of these institutions ; and their usefulness depends upon giving no occasion for the growth of a suspicious and unreasoning belief that their benevolent purposes are lost or perverted. That system of management is, therefore, manifestly best which most nearly satisfies the public that it is conducted with due regard to justice and forbearance.

Another and a more practical consideration is involved in this question.

The State annually appropriates from half to three-quarters of a million of dollars to the maintenance of these institutions ; and those connected with the making or administration of the laws owe, as a duty to the taxpayers of the State, their best efforts to guard the expenditure of the money thus appropriated against extravagance, and insure its advantageous application to the purposes for which it is intended.

An examination of some of the expenditures of these institutions and the cost of the maintenance of their inmates, establishes the fact that their business management is seriously at fault.

A report made to the Comptroller by the agent appointed

in 1878 to examine their financial affairs and business administration, contains much valuable and startling information. By this report it appears that our State institutions compare very unfavorably in the cost of their maintenance with those of other States and countries. Confined to our own State, the result of the inquiry in this respect is no less striking. There is reported quite an important variation in the prices paid for the same kind of supplies, and a great difference in the expense of supporting their inmates. The cost of provisions and supplies is given for the support of each inmate in the year 1877, in twenty different lunatic asylums, three of which are located in this State and seventeen in other States and provinces. Of the seventeen the annual cost *per capita* in six institutions was between \$50 and \$60; in two between \$60 and \$70; in seven between \$70 and \$80; in one \$81.87, and in one \$101.74. In the three New York institutions this cost is reported at \$105.88, \$140.78 and \$157.22. It thus appears that the New York asylums are not only much more expensive than the others, but that among themselves there is a difference between the highest and lowest rate of more than fifty per cent.

The last report of the State Board of Charities contains a statement of the weekly *per capita* cost of maintaining the inmates in several of our State institutions, which shows a variation scarcely less marked.

I cannot but believe that much that is defective and expensive in the present management of these institutions is attributable to divided responsibility and consequent loose and unbusiness-like methods. I fear that too much of the time of superintendents, which should be devoted to the actual care and watch of those put in their charge, is spent in other occupations, which, though not necessarily foreign

to the interests of the institutions, should not be included among their duties.

At every session of the Legislature, not only the superintendent, but delegations from the local boards of managers, appear before the committees having the subject of appropriations in charge, asking for money to maintain their institutions, which, if needed, they should receive without importunity. Appropriations are made for all manner of enlargements, repairs, alterations and improvements, many of which are disapproved after executive examination, which is unavoidably imperfect and may lead to injustice.

A suspicion may well be entertained that in the localities where these institutions are situate the privilege of furnishing the supplies and materials is granted from motives of friendliness or a desire to patronize home trade, resulting in bargains disadvantageous to the institutions and the State.

In seeking to better the condition of affairs we cannot fail to be reminded of the experience of the State in relation to prison management. During the year ending the 30th day of September, 1876, there was paid from the treasury for the maintenance of these institutions, above their earnings, the sum of \$704,379.85. By an amendment to the Constitution adopted in November of that year, the superintendence, management and control of the State prisons were vested in a superintendent, who entered upon the discharge of his duties in February, 1877. On the thirtieth day of September following, or in less than nine months, under the new management the deficiency of expenditure was reduced to \$369,688.08. This deficiency steadily decreased until the 30th of September, 1881, when a surplus of \$564.35 was reported, which has annually increased until at the close of the last year it reached \$9,106.23.

There seems to be no good reason why similarly favorable results cannot be obtained by the application of a like system to the control and management of the business affairs of our charitable institutions. It accords with the plan adopted where large private interests are involved ; it has the advantage of concentrated responsibility ; the Legislature and the Executive should, under such a system, be satisfactorily informed of the actual needs of the different institutions, and the necessary appropriations should be cheerfully made ; the time of the superintendents could be devoted to their legitimate and proper duties ; the detection and prevention of abuses and neglect could be reasonably exacted ; a very large saving should be effected in the wholesale purchase of supplies of uniform grade, for all the institutions, and the advantages consequent upon a correct application of business methods would be secured to the people of the State.

The change suggested contemplates the employment of a fit person vested with the supervision and control of these institutions, to whom a fair salary should be paid, and who should have no other business. He should absolutely be required to devote all his time to the performance of his duties.

The attention of the Legislature is earnestly called to this subject, in the hope that a better system may be adopted, with such careful consideration of detail and the necessary change in present laws as will secure the inauguration of a plan which shall be simple, efficient and well perfected.

#### EMIGRATION.

The Commissioners of Emigration report that the number of immigrants landed at Castle Garden from January 1st,

to the 1st day of December, 1883, was 372,183, being 63,464 less than were received during the corresponding time in the previous year. They estimate the total number for the entire year at 390,000, as against 455,450 for the year 1882.

During eleven months of the present year, 4,818 immigrants were admitted to the State Emigrant Hospital and Refuge, at Ward's Island, and the number remaining on the tenth day of December was 575, of which 116 were insane.

During the time covered by the report, 27,480 immigrants have been furnished employment, and 1,273 have been returned to the places from which they came.

Of the expenditures of the Board, \$168,054.04 is reported as received from the funds collected by the Treasury Department under the act of Congress directing the payment of a certain sum for each immigrant landed, and \$38,202.51 was received from the State. In addition, there was expended the sum of \$31,049.29 for repairs to the State property on Ward's Island, this sum being the balance of the amount appropriated for that purpose by the Legislature in 1882.

At the last session of the Legislature a law was passed for the purpose of entirely reconstructing this department. Such action was in my judgment entirely justified. It was based upon grounds of economy, honesty and humanity. The new law recognizes the doctrine of concentrated responsibility by providing for the appointment by the Governor and confirmation by the Senate, of a commissioner who with the respective presidents of the German Society and Irish Emigrant Society as *ex-officio* commissioners, should constitute a Board of Immigration in place of the present unwieldy, inharmonious and badly constituted board. The law also contained other safeguards in favor of the immigrants against extortion and imposition.

The new system thus provided, failed to become operative by reason of the refusal of the last Senate to act upon the nomination of a commissioner. The speedy execution of this law is earnestly recommended.

#### QUARANTINE AND HEALTH OFFICER.

The reports from the Quarantine Department and the health officer of the port of New York, show that during the past year infectious or contagious diseases have gained no foothold in the State.

The last Legislature failed to make the ordinary appropriation for the care and maintenance of the Quarantine Department. In consequence of this there exists a deficiency in that department of \$8,427.50 for which an appropriation will be necessary.

In July, 1881, the Senate appointed a committee "to investigate and ascertain the emoluments and to examine into the administration of the health officer of the port of New York, with a view of making the Quarantine Department self sustaining, and framing such laws as may be in the public interest."

The committee, after making quite a thorough examination and taking a great deal of testimony, submitted a report in which they express the opinion that the gross net income of the health officer could not average less than \$40,000 per annum, and might, in favorable years, reach as high as \$60,000 or more, and that they were sufficient to pay all the cost of maintaining the quarantine establishment after paying the health officer a liberal salary.

The following statement is also contained in the report:

"At present the boarding fee is the only one authorized and fixed by the statute; of the other fees, some are author-

ized by the quarantine commissioners, like the fee for fumigation, while others are collected without any authority whatever, except custom, and their amount is altogether in the discretion of the health officer. This is the case with what is called the 'inspection fee,' and also the 'night boarding fee.' Your committee has no hesitation in saying that such a state of things ought not to exist with any officer of the State authorized to collect fees. They, therefore, recommend that all fees hereafter collected by the health officer shall be fixed by law, and that he shall be prohibited from exacting any fees not thus provided by statute. In conclusion, your committee cannot refrain from expressing the opinion that the revenues of the health officer of the port of New York are out of all proportion to the professional skill and labor required to properly fill the office. Exceeding as they do the salary of any of the State officers, the Governor included, they constitute an anomaly in the administration of the commonwealth which is uncalled for, inexcusable and ought not to be permitted to continue."

Another fact appears in the evidence taken by the committee, which is not referred to in their report. The present incumbent of the health office testified that, in the year 1880, he paid between \$9,000 and \$10,000 as a voluntary contribution to the party of which he was a member, for political purposes.

When, in addition to the facts above presented, the Legislature is reminded that, notwithstanding the amount so collected, appropriations are annually made from the State treasury for the support of the Quarantine Department, the need of legislation on this subject will, I hope, be recognized.

It may be that, upon consideration, the fees which are now legitimately charged for services performed in this department, will not be found unduly burdensome, though some vessels now subjected to their payment might be relieved; but all fees and charges resting, in the discretion of the

officer, or exacted without authority, should be definitely fixed by law or prohibited.

In my judgment the health officer should be attached to the quarantine establishment and be paid a fair salary, which, as well as the salaries of the other parties in charge of the department, and the cost of maintaining the buildings and property of the State used in connection therewith, should be met by fees and charges collected for services performed, which fees and charges should be fixed at no higher rate than is necessary to meet such expenses.

The inauguration of such a system, it is believed would insure an efficient administration in this important department, relieve the taxpayers of the State from present burdens and subserve the interest of the commerce of the port.

#### HARBOR MASTERS.

In my last annual message the attention of the Legislature was called to the fact that the fees then collected by the harbor masters at the port of New York had been declared by the Supreme Court of the United States to be illegal, and that such fees were notwithstanding still collected under the guise of voluntary payments made for the services of those officers. It was also suggested that such services might be intrusted to the Department of Docks in connection with its other work, and thus the commerce of the port be relieved from any charge for the same. This suggestion was not adopted, but a law was passed allowing the Governor to appoint, by and with the advice and consent of the Senate, a captain of the port and eleven harbor masters, and abolishing those offices as they previously existed. The captain of the port, under the new law, was to receive a salary of thirty-five hundred dollars, besides

certain expenses, and the harbor masters were to receive a salary of twenty-five hundred dollars each, to be paid from the State Treasury.

It was claimed that the office of harbor master was necessary, and that the Department of Docks should not be invested with their duties. Though the argument in its favor did not appear conclusive, and though the payment of the expenses of these officials by the State seemed very objectionable, the bill was approved because it seemed to be the only attainable method to relieve the State from complicity in the blackmailing and extortionate methods of the prevailing system.

An effort to execute this law failed through the refusal of the Senate to act upon the nominations made to the offices which were created. I am now entirely satisfied that the Department of Docks can well perform the duties heretofore devolved upon harbor masters without expense to the State, and with little, if any, additional cost to the city of New York.

It appears from statements made to me that this service has been assumed by this department and substantially performed under its direction, during the past season.

I recommend the repeal of the law remaining unexecuted, being chapter 357 of the Laws of 1883, and all other laws by which the office of harbor master was created or is in any manner recognized, and the transfer of the duties heretofore performed by harbor masters to the Department of Docks.

#### PILOTAGE.

The fees allowed to pilots should undoubtedly be reduced. The law under which they are now collected was passed in 1865, and permitted a very large addition to previous rates

on account of the great increase in living expenses. It was then distinctly understood that such increase should be allowed for only three years, and the law so provided. The operation of the statute has been extended from time to time until all limitation has disappeared. Repeated efforts have been made to have the fees reduced by law, but they still remain a danger which cannot longer be concealed, to the supremacy of the port and the prosperity of the State. Representations made to me by both the commercial interests affected and the pilots, leave in my mind not a shadow of doubt that it is the duty of the Legislature, in the interests of the State, to regulate these fees so that they will cease to be, as now, higher than in other ports in this and foreign countries. The suggestion is made by the pilots that the extortion is mitigated because the high rates are paid by foreign instead of domestic ship owners. This idea is in direct antagonism to the considerations involved in the creation and maintenance of the commerce of a State, and betrays an entire misconception of the important interests with which the occupation of a pilot is related, and upon which its existence depends. When it is found that the number of pilots remain about the same as when the fees were enlarged; that the tonnage entering the port has increased immensely; that steamships have been largely substituted for sailing vessels, and consequently the services of the pilots are more quickly and easily performed; that the reason of the increase in fees, originally intended as temporary, has failed, and that the commerce of the port needs relief, sufficient reasons are apparent for a modification of the present law on this subject.

## THE RAILROAD COMMISSION.

The law passed in 1882 creating a Board of Railroad Commissioners was made operative during the last year, and the board was organized on the 1st day of February, 1883.

Since that time they have done a vast amount of work of a character which demonstrates the need and usefulness of such a department, and with results which are creditable to the zeal, fidelity and intelligence of the commissioners.

The operations of the board will not be here specifically detailed, more than to touch upon some facts deemed of general interest contained in the report of the commissioners, which will soon be laid before the Legislature.

During the eight months between the organization of the board and the 30th day of September, 1883, seventy-five complaints were preferred, all of which were fully investigated. Some of these involved a thorough examination into the financial affairs and history of large railroad corporations, while others had reference to the comfort and safety of passengers and citizens as related to the operations of the roads. Many recommendations have been made to the railroad companies, calculated to protect the people in life and limb, most of which have been cheerfully adopted.

Of the 6,500 miles of railroad in the State, all have been inspected by some member of the Board, or by a competent engineer employed for that purpose. When defects have been discovered, the company operating the road has been at once called on to remedy the same. The companies have generally evinced a desire to co-operate in every effort to secure the safety of travel.

Much attention has been given to the investigation of accidents on railroads, their causes and the means to pre-

vent their recurrence. Every accident occurring in any part of the State has been reported promptly to the Board.

The following is the record of those killed or injured in the operation of the railroads in this State, for the eight months ending September 30, 1883:

	Killed.	Injured.
Passengers .....	34	118
Employees .....	110	396
Other persons .....	178	146
	<hr/>	<hr/>
	322	660
	<hr/>	<hr/>

As a number of the persons who were neither passengers nor employes were killed or injured at crossings, an inquiry instituted by the Board, in relation to railroad crossings, developed the following facts:

Number of public traveled highways and streets crossed at grade by railroads in the State.....	6,881
Number of such crossings in cities and villages.....	1,825
Number of crossings where the view of approaching trains is obstructed from those traveling the highway, when within 150 feet of the crossing on either side..	1,576
Number of gates at highway crossings, including thirty-six on the Long Island Railroad.....	53
Number of flagmen employed.....	650
Number of persons killed or injured at crossings during the last five years.....	264
Number within that time killed or injured at crossings protected by gates or flagmen.....	<hr/> 119

The question of freight rates on railroads has been considered by the Board, in connection with a bill referred to them by the last Senate involving that subject, and a report will as soon as possible be submitted, which it is hoped will aid just and wise legislation regarding this question.

A number of laws and amendments to existing statutes

will in due time be presented by the Board for the consideration of the Legislature. As these will be the result of intelligent reflection and inquiry, and will have relation to important interests, I trust they will receive careful attention.

The action of the Board in requiring the filing of quarterly reports by the railroad companies, exhibiting their financial condition, is a most important step in advance, and should be abundantly sustained. It would, in my opinion, be a most valuable protection to the people if other large corporations were obliged to report to some department their transactions and financial condition.

The State creates these corporations upon the theory that some proper thing of benefit can be better done by them than by private enterprise, and that the aggregation of the funds of many individuals may be thus profitably employed. They are launched upon the public with the seal of the State, in some sense upon them. They are permitted to represent the advantages they possess and the wealth sure to follow from admission to membership. In one hand is held a charter from the State, and in the other is proffered their stock.

It is a fact, singular though well established, that people will pay their money for stock in a corporation engaged in enterprises in which they would refuse to invest if in private hands.

It is a grave question whether the formation of these artificial bodies ought not to be checked or better regulated and in some way supervised.

At any rate they should always be kept well in hand, and the funds of its citizens should be protected by the State which has invited their investment. While the stockholders are the owners of the corporate property, notoriously they are oftentimes completely in the power of the directors and

managers, who acquire a majority of the stock and by this means perpetuate their control, using the corporate property and franchises for their benefit and profit, regardless of the interests and rights of the minority of stockholders. Immense salaries are paid to officers ; transactions are consummated by which the directors make money, while the rank and file among the stockholders lose it ; the honest investor waits for dividends and the directors grow rich. It is suspected, too, that large sums are spent under various disguises in efforts to influence legislation.

It is not consistent to claim that the citizen must protect himself by refusing to purchase stock. The law constantly recognizes the fact that people should be defended from false representations and from their own folly and cupidity. It punishes obtaining goods by false pretenses, gambling and lotteries.

It is a hollow mockery to direct the owner of a small amount of stock in one of these institutions to the courts. Under existing statutes, the law's delay, perplexity and uncertainty leads but to despair.

The State should either refuse to allow these corporations to exist under its authority and patronage, or acknowledging their paternity and its responsibility, should provide a simple, easy way for its people whose money is invested, and the public generally, to discover how the funds of these institutions are spent, and how their affairs are conducted. It should at the same time provide a way by which the squandering or misuse of corporate funds would be made good to the parties injured thereby.

This might well be accomplished by requiring corporations to frequently file reports made out with the utmost detail, and which would not allow lobby expenses to be hidden

under the pretext of legal services and counsel fees, accompanied by vouchers and sworn to by the officers making them, showing particularly the debts, liabilities, expenditures and property of the corporation. Let this report be delivered to some appropriate department or officer, who shall audit and examine the same; provide that a false oath to such account shall be perjury and make the directors liable to refund to the injured stockholders any expenditure which shall be determined improper by the auditing authority.

Such requirements might not be favorable to stock speculation, but they would protect the innocent investors; they might make the management of corporations more troublesome, but this ought not to be considered when the protection of the people is the matter in hand. It would prevent corporate efforts to influence legislation; the honestly conducted and strong corporations would have nothing to fear; the badly managed and weak ought to be exposed.

#### THE CIVIL SERVICE.

During the year the provisions of the act passed by the last Legislature to regulate and improve the civil service of the State have been put into operation. Fortunately a commission was secured whose members were in hearty sympathy with the principles of the law, and who possessed much practical knowledge of the needs of the public service. The commission itself was also fortunate in obtaining the services of Silas W. Burt as Chief Examiner, whose experience in public affairs and familiarity with the best methods of regulating the civil service enabled him to render invaluable assistance to the commission and the State. The preliminary classification and the framing of rules contemplated by the act governing the appointments to place,

having been completed and received my approval, the system will become operative in respect to all State officers and in all State institutions on the fourth day of the present month. This work, owing to the diversity of the State service and the number and variety of positions affected by the law, has been a task attended with many difficulties. Although some slight revision may be necessary, on the whole I am confident the scheme will be found practicable and effective, without being too rigorous or burdensome.

In addition the commission has co-operated with the mayors of cities who, under the law, have exclusive control of the municipal service, and in several cities, notably New York and Brooklyn, a thorough system of civil service has been prepared and promulgated as nearly in harmony with the State system, as the charters and statutes relating to municipal matters will permit.

New York then leads in the inauguration of a comprehensive State system of civil service. The principle of selecting the subordinate employes of the State on the ground of capacity and fitness, ascertained according to fixed and impartial rules, without regard to political predilections and with reasonable assurance of retention and promotion in case of meritorious service, is now the established policy of the State. The children of our citizens are educated and trained in schools maintained at common expense, and the people as a whole have a right to demand the selection for the public service of those whose natural aptitudes have been improved by the educational facilities furnished by the State. The application to the public service of the same rule which prevails in ordinary business, of employing those whose knowledge and training best fit them for the duties at hand, without regard to other considerations, must elevate and

improve the civil service and eradicate from it many evils from which it has long suffered. Not the least gratifying of the results which this system promises to accomplish, is relief to public men from the annoyance of importunity in the strife for appointments to subordinate places.

#### BUREAU OF LABOR STATISTICS.

On the 4th day of May, 1883, an act was passed providing for the appointment of a "Commissioner of Statistics of Labor," and on the tenth day of the same month such Commissioner was duly appointed.

It is declared by the act to be the duty of this officer "to collect, assort, systematize and present in annual reports to the Legislature, within ten days of the convening thereof in each year, statistical details relating to all departments of labor in the State, especially in relation to the commercial, industrial, social and sanitary condition of workingmen and to the productive industries of the State."

In the prosecution of his work under the law, the Commissioner has gained much from the experience of those similarly engaged in other States, and has possessed himself of valuable information which will, doubtless, aid him in the performance of his duties.

Blanks have been prepared for the purpose of collecting the facts and statistics which it is expected this department will report. Such as have been already sent, were directed to parties who are engaged in the same branches of business and labor as are carried on in the prisons, reformatories and penitentiaries of the State.

Thus far, the Commissioner has devoted his attention almost exclusively to the examination of the system of convict labor and the contracts made by the State in

connection therewith. The result of his investigation will appear in his report, which will soon be submitted.

#### THE PRIMARY ELECTION LAW.

The act passed by the last Legislature and approved by me extending the laws to prevent and punish frauds and corruption in the primary elections or caucuses throughout the State was in most localities generally observed during the year and seems to provide absolutely for the correction in this State of what had come to be a great abuse.

In many sections of the State a nomination from one or the other of the principal political parties is practically equivalent to an election, and in every section, under our system of parties, pure primaries providing for an honest expression of public sentiment is one of the principal guaranties the people possess of their rights as citizens.

With this law in force the means are in the hands of the people, if they so will, to secure pure primaries.

#### BOARD OF CLAIMS.

The last Legislature abolished the office of Canal Appraiser and the State Board of Audit, and substituted in their place a Board of Claims, consisting of three commissioners. In accordance with the terms of the act creating it, the Board organized in June last, and has since proceeded with the work of hearing and determining the mass of business transferred to it from the two abolished boards, and that which has since arisen.

The objections which were patent in the composition of the Board of Audit are obviated by the requirements of the law, while a single tribunal is provided, composed of men fitted by training and experience to examine all private claims

against the State, many of which involve a judicial interpretation of the law. Instead of two courts of claims we now have one, and the satisfaction expressed by those who represent the interests of the State, as well as claimants, is sufficient proof of the wisdom of the law establishing this single tribunal.

Through neglect of the last Legislature no appropriation was made to meet the expenses of this Board, and you will therefore be called upon not only to make the ordinary maintenance appropriation for the coming year, but also to provide funds to pay the expenses of the Board from the time of its organization, June 1, 1883, until October 1, 1884, at which time the regular appropriation will become available.

#### NEW CAPITOL.

The people of the State are to be congratulated upon the unprecedented progress which has been made upon this structure since the 8th day of May, 1883, when the work was committed to new management, pursuant to a law of the last Legislature. A description in detail of the work done will not be attempted here, as the report of the Commissioner, containing a statement of the same, will be furnished as soon as practicable to the Legislature.

The rooms to be occupied by the Court of Appeals and its Clerk, located in the east end of the building, are ready for occupancy, and have been finished and furnished in an appropriate manner. The rooms adjoining them are also substantially finished.

A contract was made on the 19th of June, 1883, for the construction of the south-eastern staircase for the sum of \$239,345.80. The preparation for the foundation of this great structure was a work of considerable magnitude. At the

rate the work is now progressing it will be completed as soon as September 15, 1884, the date limited by the contract.

The Old Capitol and the State Library building, located east of the New Capitol, have been removed in preparing for the construction of the eastern approach. The State Library and Law Library have been temporarily placed in the room originally intended for the Court of Appeals and in the Golden Corridor adjoining, where they will remain until they are permanently located in the rooms designed for them in the west end of the building. It is exceedingly important that these rooms, and such others in the west end as are intended for the departments still remaining in the State Hall, should be completed as early as possible. When these apartments are finished, the whole interior of the building will be ready for use.

When the work was entered upon by the present Commissioner the granite and brick walls of the west end of the building were unfinished. The dimensions of this part of the structure are as follows: From north to south, 291 feet; from east to west, sixty-two feet, not including the space to be occupied by the great staircase, which is seventy-two by fifty-two feet—all comprising fully one-fourth of the floor space of the building.

It was deemed very important, that the west walls should be completed and the roof put on before the winter closed in, so that the work on the interior might be protected and further prosecuted without interruption on account of the weather, or the expense of a temporary covering. This involved the preparing and setting of a large amount of granite necessary for carrying up the walls, the great central gables, dormers and chimneys, and preparing for the roof and covering the same with slate, tile and glass.

The work was entered upon with vigor and energy, and it is gratifying to report that the whole edifice is substantially roofed.

The total cost of the building to the fifteenth day of December, was \$15,318,680.67. The total amount expended from April 9th to December 15th, 1883, was \$900,481.23, leaving a balance on hand at that date of \$99,518.77.

The number of men employed in all parts of the construction, for most of the time since the eighth day of May, has varied from thirteen to fourteen hundred. At the present rate of expenditure, the balance above mentioned will be exhausted within a very short time, and a failure to make an immediate appropriation will result in a stoppage of the work.

The Commissioner in charge has faithfully devoted himself to the performance of his important duties, and conducted the construction with energy and system, and with the most gratifying results. The taxpayers who have waited so long for relief from the burden of this gigantic work may cherish a well founded hope that the day of their deliverance is at hand. They have a right to demand, and they may expect, that the method, at last inaugurated, of exacting from employes a fair day's work for a fair day's pay will be continued without permitting the people's money to be wasted to secure partisan advantages. With an appropriation sufficient to continue the work with the same force of men as that employed during the past season, it can reasonably be expected that the entire interior of the structure will be completed by April first, of next year, and the approaches and porticoes comprising the exterior work unfinished, within two years from the present date.

The progress made this year is an added vindication of the usefulness in practice of concentrated responsibility.

Any regrets respecting the time which has been spent or the money expended in the erection of this building are out of place. Economy now is found in pushing to the utmost its completion.

There should be no check or interruption to the work so well in hand and so completely systematized; and I earnestly hope that in the interest of the tax-paying population, and to the end that the reasonable expectation of an early completion may be realized, the Legislature will make an early and liberal appropriation for its continuance.

#### PUBLIC BUILDINGS.

The act passed by the Legislature to remedy the evident neglect in the care of the public buildings, including the New Capitol, Old Capitol, State Hall, Agricultural Hall and Executive Mansion, and center in one person the care and maintenance of this property, was, in my judgment, eminently wise.

Under the old system each of these buildings was separately managed, supplies were purchased for each in comparatively small quantities at various prices, and in every respect they were maintained as distinct from each other, as though they were as many different properties belonging to different individuals.

The advantage of the new system is seen in the improved condition of the buildings and their furniture, in a reduced pay-roll, and in lower prices for supplies. The State buildings at Albany and their fixtures have cost many millions of dollars, and in themselves constitute a large property, which requires constant and intelligent care to preserve from decay and dilapidation. That heretofore, because of divided responsibility and an absolute lack of system, there

has been great neglect in this matter, involving immense losses to the State is conceded. That the new system is in the line of the application of business methods to the administration of public affairs, and is an important reform, is already proven.

#### THE ADIRONDACK WILDERNESS.

The Hudson, Mohawk and Black rivers are to a very large extent fed by streams and lakes in the southern slopes of the Adirondack wilderness; and the Black river may well be regarded as the principal feeder of the Erie canal. This statement renders the importance of protecting the water in the sources of the rivers named, from serious diminution, distinctly apparent. The fact that this can only be done by the preservation of the forests bordering on these sources of water supply, needs no demonstration and was recognized by the last Legislature by the passage of an act prohibiting the further sale of our northern wilderness lands.

The immense volume of commerce which passes through the Erie canal and the Hudson river to the seaboard, and the low stage of water during the summer in the last named waterway as well as the other rivers and streams of the State, have attracted the attention of the public to the necessity of arresting the further destruction of our northern forests.

This is certainly a very important matter, and should receive early and serious attention. We find ourselves facing the danger which now so excites the people, because the interests of the State have not been cared for in the years that are past, and because our forest-laden lands have been recklessly disposed of at nominal prices, until, at this late day, we are awoken to the fact that the control which

the State should have always maintained over that part of those lands which are important to the preservation of our streams has been to a large extent surrendered.

The plan has been, it seems, quite generally adopted by the grantees from the State to refuse to pay taxes assessed upon these lands after their purchase, and to permit them to be sold for such taxes, the owner taking advantage of the time between the levying of the taxes and the sale of the land to cut off and sell such timber as he finds to his profit. In default of other bidders at such tax sale, the State becomes the purchaser. Two years is allowed the delinquent owner after the sale to redeem his land.

Sales of these lands are customarily made by the Comptroller once in about five years, and then they are sold for taxes that have remained due and unpaid for a period not less than five years prior to the sale; thus in 1881 forest lands were sold for taxes levied thereon between the years 1871 and 1876. It will be readily seen that this allows the grantees of these lands, who from the first day of their ownership deliberately refuse payment of all taxes, from seven to twelve years within which to cut off and sell timber—thus realizing an immense return from the amount originally paid for the land.

Prior to the 23d day of November, 1883, the State had remaining of these wilderness lands in the neighborhood of 600,000 acres. The day named was the last on which large quantities which had been sold for taxes in 1881 could be redeemed; at the close of that day the State became the owner of 177,842 acres more, which had been bid in by it at such sale, and which was not redeemed. It must be conceded that this was a fair day's work on behalf of the State, in the direction of acquiring these important lands.

And the fact must not be overlooked that the trees cut from those lands thus far, have usually, if not always, comprised only those of a particular kind, which really make up but a small part of the forest which is necessary to the preservation of our water sources.

The occurrence of fires in this wilderness is an agency of destruction which should be guarded against. By this means not only the trees are destroyed, but what there is of a thin soil or mould surrounding their roots is so nearly consumed, that for a generation at least, trees and vegetation are not likely to reappear. These fires are, in most cases, the result of heedlessness on the part of lumbermen or excursionists and the guides accompanying them.

While we should not neglect to provide against any danger which threatens the supply of water in our important streams and rivers, it seems to me we are in the presence of another peril, against which we must vigilantly guard. I refer to the schemes which are likely, in the present state of the public mind, to be proposed, having for their object the purchase by the State of immense tracts of these lands, upon the representation that this is the only means of protecting the interests involved.

These lands owned by the State should be plainly located and declared, with what it may hereafter acquire, to be park lands; strict laws should be passed to prevent fires by carelessness, and to severely punish trespassers who shall cut down the trees; the guides should be under some kind of regulation and control, and it might not be amiss to establish some supervising authority to enforce the observance of the laws; and it would undoubtedly be well if the time permitted to elapse between the levying of taxes and a sale for non-payment, as well as the period allowed after sale for

redemption, should be shortened. By the adoption of some such measures, I believe the danger which seems imminent may be averted; and until it has been demonstrated that any other plan must fail, it is, in my opinion, our duty to oppose any scheme having for its object the purchase of these lands, and involving, as it would, the expenditure of millions of money.

The last Senate appointed a committee to investigate this whole question, and it is expected that their report will contain valuable suggestions and recommendations.

#### ADIRONDACK SURVEY.

In any effort instituted to protect the northern wilderness, we ought reasonably to anticipate much aid in the location of the lands, from this survey.

I find in the year 1876 an appropriation was made of \$4,250 "to *complete* the topographical survey and exploration of the Adirondack wilderness." So far from its being completed for that appropriation, more money has been given for this purpose every year since. In 1878, the time to finish this "exploration and survey," was, by a statute passed on the twenty-eighth day of May, in that year, limited to six years from that date, the sum of \$10,000 was appropriated for its purposes, and the act explicitly declares that, at the end of the time limited, "the topographical character of the work shall be complete in all respects throughout the area under survey."

Since that time and including the appropriation of that year, \$65,000 has been drawn from the treasury of the State for the work which in 1876 it seems to have been supposed would be completed for \$4,250, while the entire cost to the present date approximates \$70,000, exclusive of a very large sum for the printing of costly reports.

To the ordinary understanding it cannot but appear that the time and money thus spent should insure a perfect and complete survey of this wilderness region.

It will be observed that the time limited by the law of 1878 for the completion of this exploration and survey, expires on the 28th day of May, 1884. It is earnestly hoped that the final day may develop some practical and useful results. However this may be, the day thus fixed should be the end. If we have not yet secured what we need, it is useless to depend longer on this instrumentality.

I recommend that the Superintendent of the Adirondack survey be required, on or before the twenty-eighth day of May next, to deposit in the office of the State Engineer and Surveyor, all maps, surveys, and other results of his work, as well as all tools and instruments in his charge belonging to the State.

#### THE STATE SURVEY.

Probably the duration and cost of this establishment were no more understood at the time it was inaugurated, and its results are now but little more apparent or appreciated, than those of the Adirondack Survey.

The State Survey made its first appearance in the legislation of the State in the appropriation bill for the year 1876, when \$20,000 was appropriated "for making an accurate trigometric and topographical survey of the State, for the determination of State and county lines." Commissioners were appointed who should, it was declared, hold office for one year. No provision is made for the appointment of any successors to these commissioners. In the appropriation bill of 1877 no money is appropriated for the survey, but it is declared that the term of office of the Commissioners should

be extended to the 1st day of May, 1878. On the 6th day of May, 1878, a law was passed, the first section of which declares that, "in order to define the objects of the State Survey, to limit the expenses thereof and to provide for its speedy completion," the Commissioners theretofore appointed, naming them, "are hereby appointed to conduct the same in accordance with their last annual report to the Legislature, namely: The work is to be confined to fixing such meridian and other lines and points as are necessary to give correct bases for county, town and other surveys, so that they may be of permanent value at any time in the future."

No limit was fixed to the term of the Commissioners, and the sum of \$14,300 was appropriated "for the purposes of this act."

Since that time it has had its place regularly in the appropriation bill year after year until the sum of \$118,300 has been applied to this object. The language of the first two acts in which the survey is mentioned indicates, by the appointment of the Commissioners for one year, and extending their term an additional year, that it was supposed their duties would be of a temporary nature; and the language of the law of 1878 indicates that the object sought by that act was to define the objects of such survey, limit its expense and circumscribe its work. Nearly six years have passed, the large sum of money above mentioned has been spent, but little has apparently been accomplished, and we have no hint from the Commissioners or the Director of the time or money which will be necessary to complete the work. Its continuation is urged on the ground that it will be valuable to the cause of science. This consideration should be regarded; and it may be conceded too, that meridian and other lines should be fixed, and such "points

as are necessary to give correct bases for county, town and other surveys ;" but none of these things justify us in blindly spending the public money for a purpose the cost of which promises to be enormous, and the benefit of which may be realized only by posterity.

In my judgment this survey, and any others of a like character that are to be made for public benefit, should be prosecuted under the direction of the State Engineer and Surveyor, and the results constitute public records in his office. This officer is not at present overburdened with work, and no one who has not the engineering skill to direct such operations, is likely to hold the position. The expense of creating establishments to do such work, and the ease with which they grow into departments of the State, has often been demonstrated.

#### NIAGARA FALLS RESERVATION.

The commissioners appointed under the law passed by the last Legislature, for the purpose of selecting and locating such lands in the village of Niagara Falls as may be necessary to be reserved for the purpose of preserving the scenery of the falls of Niagara, have determined upon the lands which, in their opinion, should be reserved, and a map has been duly certified by them and filed as directed by the statute. Proceedings will be taken as soon as practicable for the appraisal of the land so selected, with a view of determining the cost attending the proposed reservation.

The project of releasing this far-famed natural wonder from the obstacles to its enjoyment which now surround it, and securing its scenery from destruction, appeals strongly to our State pride. It has, besides, certain features of practical benefit to our people which renders its success desirable if the expense attending it is not too great. The State

is in no way committed to the consummation of the proposed reservation, and the whole matter will be submitted to the Legislature for its determination, upon the report of the Commissioners, when the same shall be presented.

#### STATE BOARD OF HEALTH.

This department has further demonstrated during the past year the wisdom of its establishment. The details of its work and operations will be presented in its forthcoming report.

The powers vested in the Board relating to the investigation of nuisances and other causes of disease, the adulteration of food and drugs, and the sale of substances dangerous to the life and health of the people, has been efficiently and beneficially exercised. The advantages of its work to the State will be more marked as its methods become more completely systematized, and the scope of its operation increased.

#### PLEURO PNEUMONIA.

By an act of the last Legislature the laws providing means for eradicating the disease of pleuro pneumonia among cattle was repealed, and a considerable sum of money which was being gradually expended to maintain a State agency in New York, of but little practical value, so long as adjoining States failed to co-operate with us, was turned into the general fund.

I have no knowledge of any loss resulting from the discontinuance of the State agency. It is a fact, however, that the germs of the disease exist in this country and within our own borders. The necessity for some general and effective action is apparent.

Other States are moving to memorialize the Federal Gov-

ernment to take proper action to stamp out the disease and protect the country from its dissemination. To this movement the State of New York should give its influence. I therefore suggest that a resolution be adopted by the Legislature at an early day, requesting the Senators and Representatives in Congress from this State to urge upon that body the need of Federal legislation on this subject.

#### CONCLUSION.

The people of the State are to be congratulated upon the progress made during the last year in the direction of wholesome legislation.

The most practical and thorough Civil Service Reform has gained a place in the policy of the State.

Political assessments upon employes in the public departments have been prohibited.

The rights of all citizens at primary elections have been protected by law.

A bureau has been established to collect information and statistics touching the relations between labor and capital.

The sale of forest lands at the source of our important streams has been prohibited, thereby checking threatened disaster to the commerce on our water-ways.

Debts and obligations for the payment of money, owned though not actually held within the State, have been made subject to taxation, thus preventing an unfair evasion of liability for the support of the government.

Business principles have been introduced in the construction and care of the New Capitol and other public buildings, and waste and extravagance thereby prevented.

A law has been passed for the better administration of the Emigration Bureau and the prevention of its abuses.

The people have been protected by placing co-operative insurance companies under the control and supervision of the Insurance Department.

The fees of receivers have been reduced and regulated in the interests of the creditors of insolvent companies.

A Court of Claims has been established where the demands of citizens against the State may be properly determined.

These legislative accomplishments, and others of less importance and prominence, may well be cited in proof of the fact that the substantial interests of the people of the State have not been neglected.

The State of New York largely represents within her borders the development of every interest which makes a nation great. Proud of her place as leader in the community of States, she fully appreciates her intimate relations to the prosperity of the country; and justly realizing the responsibility of her position, she recognizes, in her policy and her laws, as of first importance, the freedom of commerce from all unnecessary restrictions. Her citizens have assumed the burden of maintaining, at their own cost and free to commerce, the waterway which they have built and through which the products of the great West are transported to the seaboard. At the suggestion of danger she hastens to save her northern forests, and thus preserve to commerce her canals and vessel-laden rivers. The State has become responsible for a bureau of immigration, which cares for those who seek our shores from other lands, adding to the nation's population and hastening to the development of its vast domain; while at the country's gateway a quarantine, established by the State, protects the nation's health.

Surely this great Commonwealth, committed fully to the interests of commerce and all that adds to the country's prosperity, may well inquire how her efforts and sacrifices have been answered; and she, of all the States, may urge that the interests thus by her protected, should, by the greater government administered for all, be fostered for the benefit of the American people.

Fifty years ago a most distinguished foreigner, who visited this country and studied its condition and prospects, wrote:

"When I contemplate the ardor with which the Americans prosecute commerce, the advantages which aid them and the success of their undertakings, I cannot help believing that they will one day become the first maritime power of the globe. They are bound to rule the seas as the Romans were to conquer the world. \* \* \* The Americans themselves now transport to their own shores nine-tenths of the European produce which they consume, and they also bring three-fourths of the exports of the New World to the European consumers. The ships of the United States fill the docks of Havre and of Liverpool; whilst the number of English and French vessels which are to be seen in New York is comparatively small."

We turn to the actual results reached since these words were written with disappointment.

In 1840 American vessels carried  $82\frac{9}{10}$  per cent of all our exports and imports; in 1850,  $72\frac{5}{10}$ ; in 1860,  $66\frac{6}{10}$ ; in 1870,  $35\frac{6}{10}$ ; in 1880,  $17\frac{4}{10}$ ; in 1882,  $15\frac{6}{10}$ .

The citizen of New York, looking beyond his State and all her efforts in the interest of commerce and national growth, will naturally inquire concerning the causes of this decadence of American shipping.

While he sternly demands of his home government the exact limitation of taxation by the needs of the State, he will challenge the policy that accumulates millions of useless and

unnecessary surplus in the national treasury, which has been not less a tax because it was indirectly but surely added to the cost of the people's life.

Let us anticipate a time when care for the people's needs as they actually arise, and the application of remedies, as wrongs appear, shall lead in the conduct of national affairs ; and let us undertake the business of legislation with the full determination that these principles shall guide us in the performance of our duties as guardians of the interests of the State.

GROVER CLEVELAND.

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#### MESSAGE RELATING TO EXECUTIVE CLEMENCY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, January 23, 1884.

*To the Legislature:*

The Constitution requires that the Governor shall annually communicate to the Legislature each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve. I herewith submit the information thus required, and further state that the number of applications presented for executive clemency was four hundred and forty-nine ; number of pardons granted, thirty-nine ; number of commutations granted, seventeen ; number of respites, one ; number of cases denied, one hundred and eighty-one, and number of cases pending, two hundred and eleven.

GROVER CLEVELAND.

[For details, see Appendix.]

VETO, ASSEMBLY BILL No. 1, TO AUTHORIZE  
ULSTER COUNTY TO ISSUE BONDS.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, January 28, 1884. }

*To the Assembly :*

I return, without approval, Assembly bill No. 1, entitled "An act authorizing the Board of Supervisors of Ulster county to issue bonds to meet and pay a portion of the bonds of said county, falling due March first, in the year eighteen hundred and eighty-four, and ratifying and confirming the resolution of said board to issue said bonds, passed at its annual session for the year eighteen hundred and eighty-three."

I was induced to approve a bill passed by the last Legislature, authorizing the issue of bonds by the county of Ulster for fifty thousand dollars, payable in the year 1895, to retire bonds of the same amount falling due on the first day of March, 1883, upon the understanding that peculiar and exceptional reasons existed which made the enactment of a special law for that purpose proper, and that another application of the same kind would not be made to the Legislature.

The bill now before me authorizes the issue of the bonds of the county for seventy-five thousand dollars, payable in 1896, to retire that amount of bonds falling due on the first day of March, 1884.

I am not at all satisfied with the reasons given for the extension of this indebtedness, instead of its payment. As a general proposition, I believe that public as well as private debts should be paid as they mature.

But my chief objection to this bill is based upon the fact

that if a postponement of the payment of the bonded indebtedness of a county is deemed wise and proper, a general law was passed in the year 1878, by which the same can be accomplished by its board of supervisors; and it appears that resolutions have been passed by the supervisors of Ulster county, fully authorizing the issues of the bonds provided for by this bill. The statute referred to seems to me sufficient and effective; and if it has imperfections, they should be remedied by amendment. In any event, the responsibility of transferring the burden of indebtedness now due to those who shall be taxpayers in the future, should rest entirely upon the local authorities having the interest of the county in their keeping.

The argument which has been presented to me, that prospective investors in the bonds to be issued will deem them more desirable if specially authorized by an act of the Legislature, should have no weight.

A plain, simple, general law, has been provided, under which these bonds may be issued, which is apparently sufficient for other counties which desire to postpone the payment of their indebtedness.

If the whims of those who may desire to invest in Ulster county bonds are to excuse the passage of this statute, all efforts to check special and unnecessary legislation of the most mischievous character may well be abandoned.

The evils attending the relaxation of the rule which refuses all special legislation in cases provided for by general laws, is illustrated by the presentation of this bill, which I suppose to be the result of favorable action upon a similar measure at the last session of the Legislature.

GROVER CLEVELAND.

MESSAGE TRANSMITTING THE ANNUAL REPORT  
OF THE CIVIL SERVICE COMMISSION.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, January 31, 1884. }

*To the Legislature:*

I have the honor to transmit herewith the first annual report of the New York Civil Service Commission.

I desire to call attention particularly to the proposed amendments of the existing law, which will be found at the close of the report. They are such as the experience of the Commissioners has led them to suggest as proper and desirable to complete and render more effective the system of civil service reform, to which the State is fully committed.

Their importance should lead to their careful consideration at an early day.

GROVER CLEVELAND.

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MESSAGE, SPECIAL, REPLYING TO SENATE INQUIRIES CONCERNING HARBOR MASTERS OF NEW YORK.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, February 11, 1884. }

*To the Senate:*

I acknowledge the receipt of a copy of the following resolution, adopted by the Senate on the sixth instant:

*Resolved*, That His Excellency the Governor be and he is hereby respectfully requested to transmit to the Senate, at his earliest convenience, any knowledge and information he may have in his possession as to the performance of the duties of

the captain of the port and harbor masters of the port of New York, by the dock department, or its subordinates, since the 24th day of May, 1883."

In the annual message which I transmitted to the Legislature at the beginning of its present session, pursuant to constitutional requirement, I ventured to recommend the abolition of the offices of captain of the port and harbor masters, and that the duties devolved upon these officials should be transferred to the department of docks in the city of New York.

In advocating this change, and as proof that it was entirely practicable, the following language was used :

"It appears from statements made to me that this service has been assumed by this department and substantially performed under its direction during the past season."

This declaration was officially and deliberately made, and I am not aware that it should be modified ; the statements upon which it was based I then believed to be true, and I have no reason to doubt them now. Such declaration may, therefore, at this time, be reiterated as a response to the resolution which has been submitted to me.

I hope that I should not be justified in assuming that the Senate seeks to pass judgment upon the weight which I should give to the evidence presented to me upon this subject. I fully appreciate the fact that if I am misled by insufficient proof or by an improper estimate of its value, I alone must bear the responsibility and meet the consequences.

The resolution before me is silent as to the purpose of its adoption. If it had its rise in the pendency of proposed legislation involving an inquiry touching the performance of the duties pertaining to the offices of captain

of the port and harbor masters, I beg to remind the Senate that the facts necessary to intelligent action are easily derived from official sources, other than the Executive Department.

If such legislation shall be presented to me for official action, it will be my plain duty to avail myself of all the knowledge and information I now possess, or which I may be able to acquire, in order that I may be rightly guided in the discharge of constitutional obligations. Until that point is reached, I am impressed with the idea that the proprieties are better preserved if the Legislature acts without interference, or a detailed presentation of facts touching pending legislation, on the part of the Executive. If facts in his possession, or reasons which seem to him sufficient, lead him to differ with the Legislature, a time has wisely been designated by the Constitution when such facts and reasons shall be submitted to that body for its examination and review. I can hardly think it well to anticipate the time thus fixed.

I desire to do all that the utmost courtesy to the Senate implies, and disclaim any disposition to refuse proper aid in the discharge of its duties; but I am of the opinion that a more detailed answer to the resolution now submitted to me, than has already been given, might confuse our relations to legislative action, and establish a precedent that would hereafter lead to mischief and embarrassment.

GROVER CLEVELAND.

## VETO, ASSEMBLY BILL No. 4, RELATING TO RAIL-ROADS AND PARKS IN CERTAIN PORTIONS OF NEW YORK CITY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, February 20, 1884. }

*To the Assembly:*

I herewith return, without my approval, Assembly bill No. 4, entitled "An act to prohibit the taxing of any railroad in, on or under, or the laying upon or excavation or tunneling of any public park north of Amity or West Third street, west of Broadway and south of Thirty-fourth street in the city of New York."

It is conceded that the only public park to which the provisions of this bill apply, is known as Washington Square or Washington Parade Ground; and the object of the bill is to prevent the construction of any railroad within a tunnel under said park.

By chapter 380 of the Laws of 1878, it is provided that this park "shall be used in perpetuity as one of the public parks or squares or places of the city, and shall be kept by the department of public parks in proper order, ornamented and protected for the public use as a public park, and for no other use or purpose whatsoever."

Chapter 582 of the Laws of 1880, which authorizes the building of tunnels for railroad purposes, declares that nothing in said act shall be construed to repeal the statute of 1878 above referred to, "or to authorize the use or occupation by any company or companies, of any public park or square in any city or village of this State for any of the purposes of this act, or to permit the construction of an open

cut railroad in or through any street or public place in any such city or village, but any road constructed under the provisions of this act in or through such street or public place, shall be wholly underground and constructed in a tunnel and not otherwise."

It is evident that the park, which it is the object of this bill to protect, is well defended from disturbance by existing statutes. If any point remains unguarded, it is a possibility that a railroad may be constructed in a tunnel under such park; and this is prohibited by the proposed bill.

The parks and public places within the city of New York should be reasonably protected; and if this bill prohibited the construction of a railroad beneath the soil of the park in question, in a manner or at such a depth as would injure or destroy its trees or other ornamentations, the question would be whether the park should be sacrificed for such a purpose. But the prohibition is against any construction under the park, though it should be at a depth that would positively insure against damage or destruction.

This, it seems to me, is unnecessarily broad and sweeping. Such a provision might prevent a construction underground that would be valuable to the public and which would not in any way impair the beauty and usefulness of the park.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 123, TO CHANGE THE NAME OF THE SPRING SUPPLY WATER COMPANY OF ONEIDA.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, February 25, 1884. }

*To the Assembly:*

I herewith return, without my approval, Assembly bill No. 123, entitled "An act to change the name of the Spring Supply Water Company of Oneida, New York, to the Warner Water-works."

I am at loss to discover any reason why the appropriate name which this corporation first adopted should be changed as proposed, unless it is to give notoriety to an individual or his achievements.

But if there are any sufficient grounds for such a change it can be accomplished under existing statutes by an application to the Supreme Court for that purpose.

This bill, it seems to me, is a specimen of most objectionable and useless special legislation, which should be rejected on its first appearance.

GROVER CLEVELAND.

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VETO, ASSEMBLY BILL No. 232, RELATING TO THE PRISON LABOR COMMISSION.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, March 3, 1884. }

*To the Assembly:*

I hereby return, without approval, Assembly Bill No. 232, entitled "An act to amend chapter twelve of the Laws of

eighteen hundred and eighty-four, entitled 'An act to provide for a commission to examine into the operation of the contract labor system in the prisons, penitentiaries and reformatories in this State.'"

The original act which this bill seeks to amend provides that the commissioners appointed by virtue thereof shall hold their offices until the 1st day of March, 1884, and that their report shall be made to the Legislature not later than that date.

The bill now before me so amends this act as to provide that the terms of the commissioners shall continue until their report is made, which it is declared shall be done at the earliest practicable date consistent with the performance of their duties.

The amendatory bill was passed by the Senate on the first day of March, and was presented to me between two and three o'clock in the afternoon of the same day. If the terms of these commissioners, under the original law, expired with the twenty-ninth day of February, it seems to be conceded that, they being out of office on the first day of March, an amendment passed on that day would fail to reinstate them or continue their powers as commissioners. But the bill was passed upon the theory that the commissioners appointed under the original act, held their offices till the close of the first day of March, and that therefore their terms might be extended by legislation receiving Executive approval on that day.

The examination I was able to give the question, during the few hours left me to act upon the bill, convinced me that the limitation of the term, by the words, "until the first day of March," excluded the latter day, and that the offices expired with the close of the twenty-ninth day of

February. I am led to this conclusion by the natural import of the words, by a decision of the Court of Appeals, covering, I think, the exact point, by a reference to the language of other statutes, and by the opinion of able lawyers with whom I have consulted.

If this view is correct, my approval of the bill under consideration would not accomplish the result desired; and if the commission is to be revived it must be done by other legislation. I have, therefore, determined not to approve the measure.

There are some other objections to the bill, which, in view of the fact that the Legislature will probably deem it wise to restore the commission, and that prompt action will be taken for that purpose, may well be here noticed.

There is no provision made for filling vacancies in the commission, nor is there any appropriation of money to pay its expenses. The propriety of supplying these defects is quite apparent. They existed in the original bill, which was approved by me, but as they were not necessarily fatal I was not willing to delay the work of the commission by interposing a veto.

When the original bill was approved, no law had been passed abolishing the contract labor system, and it was not supposed that this would be done until the report of the commission should be presented. In this condition of affairs the commissioners might well be invested with the powers and duties defined and limited in sections two and three of the act authorizing their appointment, as follows:

§ 2. The said commission is hereby authorized and empowered to examine into and report upon the practical operation of the contract system for the employment of convicts in the State prisons, penitentiaries and reformatories of this State,

as now required by law, and particularly as to the effect of such employment upon prison management and discipline, upon the prisoners and upon the community at large ; and for such purpose the said commissioners or any of them shall have full power and authority to enter any and all such institutions at all times, and shall have power to examine witnesses and to send for and examine books and papers.

§ 3. The said commission shall report their conclusions, with such recommendations as they may deem proper, as to the best method of employing such convict labor, to this Legislature, not later than the first day of March, etc.

It will thus be seen that almost the entire scope of the duties required of the commissioners, and the powers vested in them, had reference to an examination concerning the then existing system of contract convict labor.

The people had condemned this very system at the polls, and by an emphatic majority had declared that it should be abolished. The Legislature had the power and the right, if they saw fit, to make further inquiry by means of the commission, before they complied with the demands of the people thus expressed. But before the commissioners were well under way the Legislature, almost unanimously, passed a bill abolishing the contract labor system. This bill has, to-day, received executive approval ; and by virtue of such enactment the vexed question of contract convict labor is disposed of and settled.

The bill now under consideration is objectionable, because it continues and re-enacts the provisions of the original act, by which the commissioners are directed to examine into the merits of the contract system, which has been abolished, instead of requiring them to devote all their attention to the selection of a substitute therefor.

The title of the bill should be changed, and the powers

and duties of the Commissioners should be strictly confined to such an examination as will enable them to report a satisfactory and economical plan, to be adopted in lieu of the abolished contract system.

Manifestly, this is all that remains in connection with this subject, and it most urgently demands the immediate and serious attention of the Legislature.

All concede, I believe, that the prisoners should be in some manner employed, and that they should not be maintained in idleness, entirely at the expense of the public.

The workingmen and manufacturers who are, or honestly believe themselves to be, injured by contract convict labor, have made their demands in good faith and their demands have been complied with by the abolition of the system of which they complained. Abundant opportunity has been afforded parties and individuals to gain such partisan and personal advantage as the subject has been supposed to offer; and it seems to me that now the interests of the taxpayers of the State should be considered.

It will, I think, be generally conceded that the substitution of any new plan for the employment of convict labor will increase taxation and sacrifice the self-supporting feature of our penal institutions; in any event this must be the result in the first stages of its operation. The fact may well be recalled that a little more than six years ago, the people were taxed more than seven hundred thousand dollars for the maintenance of our prisons. I am bound to assume that the change of system determined upon, will justify an increased taxation; and while this branch of the question should be fairly met, the plan should be selected that will be efficient and still increase in the least amount the burdens of the taxpayers.

I am decidedly of the opinion, too, that if the commissioners are to be retained by new legislation, they should be required to report to the present Legislature. If they are relieved from the duty of examining all the branches of inquiry connected with the subject of contract convict labor, and address themselves to the task of simply preparing a new plan for adoption in its stead, their labors will of course be much shortened and made easier. A number of investigations which have already been made will afford them aid, and the results of the thorough examinations just completed by the commissioner of statistics of labor are at their command.

I am informed that in one prison a contract for the labor of two hundred and ten convicts will expire on the last day of the present year, and another for two hundred and sixty-five on the 28th day of February, 1885. Some means should certainly be devised in advance of the expiration of such contracts, to keep these four hundred and seventy-five convicts employed. This is necessary as well for their own good and the discipline of the prison, as from motives of economy. There should be no chance taken of their continued idleness while another Legislature, to a great extent new to the subject, is settling upon a plan for their employment.

In justice to the counties having penitentiaries where convicts are employed, this question should be speedily settled. They receive prisoners from adjoining counties and make contracts for their custody, based, to a great extent, upon the manner in which their labor may be utilized.

I have no doubt that the commissioners heretofore appointed, if the range of their inquiries is limited simply to the presentation of a plan for convict labor, can readily report to this Legislature without any extension of the

session for that purpose. I think the Legislature should agree with me on this subject, since the commissioners were allowed by the original bill only three weeks to report concerning subjects involving an infinitely broader field of inquiry than that now proposed. But in any event the Legislature should remain in session till this very important matter is disposed of and an end put to agitation on the subject.

And inasmuch as it appears to be quite certain that any change of system will involve expense to the State, the amount of such expense should be ascertained and the necessary appropriation made therefor.

Though, under existing laws, the Superintendent of Prisons might have authority to employ the convicts, temporarily, in some of these institutions, this course would necessitate the expenditure of considerable sums of money, without reaching the reformatories and protectories, which are not under the control of the superintendent.

I hope that prompt action on the part of the Legislature will result in the speedy passage of a law which, in a sensible and business-like way, will limit to the lowest amount the increased taxation likely to follow from a change in the manner of employing convict labor, and which, at the same time, will remedy any abuses and defects of the system which has been abolished.

GROVER CLEVELAND.

## MESSAGE, SPECIAL, RECOMMENDING INVESTIGATION OF EXPENSES INCURRED IN REPAIRING ARMORIES AND ARSENALS.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *March 6, 1884.**To the Assembly:*

I deem it my duty to call the attention of the Assembly to the fact that in a recent examination which has been made touching the repairs made to certain armories and arsenals of the State, a condition of affairs has been developed which indicates with reasonable certainty that the amounts charged and paid for such repairs have been grossly excessive, and that the moneys of the State have been wrongfully obtained by means of false and misleading vouchers and fraudulent devices.

The particulars of these allegations will not be here detailed; but evidence is at hand which, in my judgment, justifies me in recommending a thorough and rigid examination of all the facts connected with the repairs above mentioned, to the end that if the State has suffered wrongs, they may be redressed, and if the public funds have been improperly obtained, they may be recovered.

I therefore respectfully request that a committee of the Assembly may be appointed, which shall be authorized and directed to investigate, concerning all repairs made at the expense of the State on arsenals and armories, and that they report thereon within such reasonable time as may be fixed.

GROVER CLEVELAND.

VETO, SENATE BILL No. 117, TO CHANGE THE NAME OF THE "ASSOCIATION FOR THE BENEFIT OF COLORED ORPHANS."

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *March 6, 1884.*

*To the Senate:*

I hereby return, without approval, Senate bill No. 117, entitled "An act to change the corporate name of the Association for the Benefit of Colored Orphans in the city of New York, to the Colored Orphans' Asylum and Association for the Benefit of Colored Children in the city of New York."

I have once before refused, during the present session of the Legislature, to approve a bill of this character, upon the ground that the desired purpose can be accomplished by application to the court under laws already existing. The bill now presented to me should be dealt with in the same manner and for the same reason. By section 1 of chapter 322 of the Laws of 1870, as amended by chapter 280 of the Laws of 1876, it is provided as follows:

"Any incorporation, incorporated company, society or association, organized under the laws of this State, excepting banks, banking associations, trust companies, life, health, accident and fire insurance companies, may apply at any Special Term of the Supreme Court, sitting in the county in which shall be situated its chief business office, for an order to authorize it to assume another corporate name."

GROVER CLEVELAND.

VETO, SENATE BILL No. 35, AMENDING CHARTER  
OF SKANEATELES.

STATE OF NEW YORK.

EXECUTIVE CHAMBER, }  
March 10, 1884. }*To the Senate:*

I herewith return, without approval, Senate bill No. 35, entitled "An act to amend chapter six hundred and twenty-one of the Laws of eighteen hundred and fifty-seven, entitled 'An act to condense and amend the several acts incorporating or relating to the village of Skaneateles.'"

At the last session of the Legislature, a bill was passed for the purpose of amending the charter of the village of Skaneateles, so badly constructed and unintelligible that I could not approve it. At the present session another bill was passed on the same subject, in which the vices of the former were so faithfully preserved, that it was withdrawn from my hands for amendment. As amended, it is now before me again, but still so imperfect that I think it should not become a law.

It provides for the election of a street commissioner, and his powers and duties are defined; but sections of the original law are left untouched, devolving almost identical powers and duties upon other persons. This cannot fail to beget uncertainty and confusion.

Another provision of the bill vests the trustees of the village with the power to establish and maintain a police force. A chief of police is mentioned and he is given certain powers, but no other members of the proposed force are provided for; while sections of the original charter making the president of the village the head of the police,

and authorizing the board of trustees to appoint one or more police constables, remain unaltered.

Section five of the bill provides for the amendment of subdivision ten of section three of title five of the original charter.

There is no such subdivision of the section mentioned, and it is evident that a mistake has occurred through carelessness in drafting the bill.

The original charter contains a very wholesome and proper prohibition against the borrowing of money by the village, or the incurring of liability. An amendment proposed in this bill, though its language is somewhat obscure, permits, I think, the greatest latitude in this direction.

Without referring to other imperfections, it is evident that this bill is no better, and, perhaps, not much worse, than many of the same nature which are prepared without a very clear idea of their necessity, introduced without knowledge of their contents and passed with but little examination.

The bills amending village charters that are so constantly and upon slight pretexts presented to the Legislature, consume much time to very little purpose, and they should be rejected as often as it can be done without absolute injury.

The general laws which have been passed authorizing the incorporation of villages, it seems to me, meet every conceivable need of these communities; and if the provisions of such laws were made applicable to villages having special charters, so far as they are not in conflict therewith, much trouble and annoyance would be prevented, and the people of the villages within the State would be abundantly protected.

I earnestly recommend that a law be passed for that purpose.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 156, RELATING TO  
COUNTY TREASURERS.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *March 14, 1884.* }*To the Assembly:*

I return, without approval, Assembly bill No. 156, entitled "An act to amend chapter four hundred and thirty-six of the Laws of eighteen hundred and seventy-seven, entitled 'An act in relation to county treasurers,' as amended by chapter five hundred and eighty of the Laws of eighteen hundred and eighty."

Chapter 436 of the Laws of 1877, contains valuable provisions limiting the receipts of county treasurers to a fixed salary, and giving to the counties the benefit of interest on moneys deposited and certain fees and perquisites, which had theretofore been claimed by the county treasurers.

This statute also contains other provisions touching these public officers, defining distinctly their duties and responsibilities in their relations to the people. It is a law altogether in the direction of better government.

The only objectionable section was the last one, numbered ten in the original statute, which read as follows:

"§ 10. Nothing herein contained shall apply to the counties of Monroe and Seneca."

Every year thereafter, up to 1880, this section was amended by adding counties to those excepted, until at that time twelve counties had been taken out of the operation of the law.

On the 8th day of May, 1880, the act was amended by

adding a section to be called section ten, containing important provisions entirely disconnected with the exception of any counties, and the original section ten, containing such exceptions, was changed to section eleven, and amended so that it was restored to its original reading as quoted above, which only excepted the counties of Monroe and Seneca; and from that time the section of the act of 1877, relating to excepted counties, became section eleven instead of ten.

On the 25th day of June, 1880, a law was passed amending section ten of the law of 1877, so that it should read as follows:

“§ 10. Nothing herein contained shall apply to the counties of Sullivan, Putnam, Greene, Monroe, Onondaga, Columbia, Seneca, Essex, Delaware, Cortland, Queens, Madison, Oswego, Rensselaer, Livingston and Erie.”

The effect of this legislation was to strike out the new section ten, which had a few days before been inserted in the original law, and substitute in lieu thereof a provision excepting sixteen counties from the operation of the original law.

Both in 1881 and 1882, the first section of the law of 1880 was amended by providing, in effect, that it should amend section eleven of the law of 1877, instead of section ten.

While, therefore, by these last acts the mistake in the law of 1880 was corrected, the bill now before me, which amends section ten of the law of 1877, as amended by the law of 1880, restores the erroneous condition of things as they existed after the passage of the law of 1880, as above explained, with the county of Fulton added to the counties excepted.

Of course this mistake is sufficient reason for rejecting the bill.

And if it only accomplished the exception of another county from the operation of the original law of 1877, I should be inclined to withhold my approval of the bill, for the reason that in my opinion treasurers of all the counties should be limited and restrained by the wise and wholesome provisions of such original law.

GROVER CLEVELAND.

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MEMORANDUM FILED WITH SECRETARY OF STATE  
AND ACCOMPANYING ASSEMBLY BILL No. 49,  
CONFERRING ADDITIONAL POWER UPON THE  
MAYOR OF NEW YORK. APPROVED.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *March 17, 1884.*

The interest which has been aroused regarding the merits of this bill, and quite a determined hostility which has been developed on the part of those entitled to respectful consideration, appear to justify a brief reference to the principles and purposes which seem to me to be involved in the measure, and an incidental statement of the process of thought by which I have been led to approve the same.

The opponents of the bill have invoked the inviolability of the right of the people to rule themselves, and have insisted upon the preservation of a wise distribution of power among the different branches of government; and I have listened to solemn warning against the subversive tendency of the concentration of power in municipal rule, and

the destructive consequences of any encroachment upon the people's rights and prerogatives.

I hope I have not entirely misconceived the scope and reach of this bill; but it seems to me that my determination as to whether or not it should become a law does not depend upon the reverence I entertain for such fundamental principles.

The question is not whether certain officers heretofore elected by the people of the city of New York shall, under the provisions of a new law, be appointed. The transfer of power from an election by the people to an appointment by other authority, has already been made.

The present charter of the city provides that the mayor "shall nominate and by and with the consent of the board of aldermen, appoint the heads of departments."

The bill under consideration provides that after the first day of January, 1885, "all appointments to office in the city of New York now made by the mayor and confirmed by the board of aldermen, shall be made by the mayor without such confirmation."

The change proposed is clearly apparent.

By the present charter the mayor, elected by all the people of the city, if a majority of twenty-four aldermen elected by the voters of twenty-four separate districts concur with him, may appoint the administrative officers, who shall have charge and management of the city departments.

The bill presented for my action allows the mayor alone to appoint these officers. This authority is not conferred upon the mayor now in office who was chosen without anticipation on the part of the people who elected him that he should exercise this power, but upon the incoming mayor who, after the passage of the act, shall be elected with the

full knowledge on the part of the people at the time they cast their votes, that they are constituting an agent to act for them in the selection of certain other city officers.

This selection under either statute is delegated by the people. In the one case it is exercised by the chief executive acting with twenty-four officers representing as many different sections of the municipality; in the other by the chief executive alone.

I cannot see that any principle of democratic rule is more violated in the one case than in the other. It appears to be a mere change of instrumentalities.

It will hardly do to say that because the aldermen are elected annually, and the mayor every two years, that the former are nearer the people and more especially their representatives. The difference in their terms is not sufficient to make a distinction in their direct relations to the citizen.

Nor are the rights of the people to self-government in theory and principle better protected when the power of appointment is vested in twenty-five men, twenty-four of whom are responsible only to their constituents in their respective districts, than when this power is put in the hands of one man elected by all the people of the municipality with particular reference to the exercise of such power. Indeed in the present condition of affairs, if disagreement arises between the mayor and the aldermen, the selection of officers by the representatives of all the people, might be defeated by the adverse action of thirteen representatives of thirteen aldermanic districts. And it is perfectly apparent that these thirteen might, and often would, represent a decided minority of the people of the municipality.

It cannot be claimed that an arrangement which permits such a result is pre-eminently democratic.

It has been urged that the proposed change is opposed to the principle of home rule. If it is intended to claim that the officers, the creation of which is provided for, should be elected, it has no relevancy; for that question is not in any manner presented for my determination. And it surely cannot be said that the doctrine of home rule prevents any change by the Legislature of the organic law of municipalities. The people of the city cannot themselves make such change; and if legislative aid cannot be invoked to that end it follows that abuses, flagrant and increasing, must be continued, and existing charter provisions, the inadequacy of which for the protection and prosperity of the people is freely admitted, must be perpetuated. It is the interference of the Legislature with the administration of municipal government, by agencies arbitrarily created by legislative enactment, and the assumption by the law-making power of the State, of the right to regulate such details of city government as are, or should be, under the supervision of local authorities, that should be condemned as a violation of the doctrine of home rule.

In any event I am convinced that I should not disapprove the bill before me on the ground that it violates any principle which is now recognized and exemplified in the government of the city of New York.

I am also satisfied that as between the system now prevailing and that proposed, expediency and a close regard to improved municipal administration lead to my approval of the measure.

If the chief executive of the city is to be held responsible for its order and good government, he should not be ham-

pered by any interference with his selection of subordinate administrative officers; nor should he be permitted to find in a divided responsibility an excuse for any neglect of the best interests of the people.

The plea should never be heard that a bad nomination had been made because it was the only one that could secure confirmation.

No instance has been cited, in which a bad appointment has been prevented by the refusal of the board of aldermen of the city of New York to confirm a nomination.

An absolute and undivided responsibility on the part of the appointing power accords with correct business principles, the application of which to public affairs will always, I believe, direct the way to good administration and the protection of the people's interests.

The intelligence and watchfulness of the citizens of New York should certainly furnish a safe guaranty that the duties and powers devolved by this legislation upon their chosen representative will be well and wisely bestowed; and if they err or are betrayed, their remedy is close at hand.

I can hardly realize the unprincipled boldness of the man who would accept at the hands of his neighbors this sacred trust, and standing alone in the full light of public observation, should willfully prostitute his powers and defy the will of the people.

To say that such a man could, by such means, perpetuate his wicked rule, concedes either that the people are vile, or that self-government is a deplorable failure.

It was claimed, that because some of these appointees become members of the board of estimate and apportionment, which determines very largely the amount of taxation, therefore the power to select them should not be given to the

mayor. If the question presented was whether officials having such important duties and functions should be elected by the people or appointed, such a consideration might well be urged in favor of their election. But they are now appointed and they will remain appointive whether the proposed bill should be rejected or approved. This being the situation, the importance of the duties to be performed by these officials, has to do with the care to be exercised in their selection, rather than with the choice between the two modes of appointment which are under consideration.

For some time prior to the year 1872, these appointments were made by the mayor without confirmation, as is contemplated by the bill now before me. In that year a measure passed the Legislature giving the power of appointment to the common council. The chief executive of the State at that time was a careful and thorough student of municipal affairs, having large and varied experience in public life. He refused to approve the bill, on the ground that it was a departure from the principle which should be applied to the administration of the affairs of the city and for the reason that the mayor should be permitted to appoint the subordinate administrative officers without the interference of any other authority.

This reference to the treatment of the subject by one of my distinguished predecessors in office, affords me the opportunity to quote from his able and vigorous veto message which he sent to the Legislature on that occasion. He said :

“Nowhere on this continent is it so essentially a condition of good government as in the city of New York, that the chief executive officer should be clothed with ample powers, have full control over subordinate administrative depart-

ments, and so be subject to an undivided responsibility to the people and to public opinion for all errors, short-comings and wrong-doings by subordinate officers."

He also said :

"Give to the city a chief executive, with full power to appoint all heads of administrative departments. Let him have power to remove his subordinates, being required to publicly assign his reason."

He further declared :

"The members of the common council, in New York, will exert all the influence over appointments which is consistent with the public good, without having the legal power of appointment *or any part of it*, vested in their hands."

In 1876, after four added years of reflection and observation, he said, in a public address, when suggesting a scheme of municipal government :

"Have, therefore, no provision in your charter requiring the consent of the common council to the mayor's appointments of heads of departments ; *that only opens the way for dictation by the council or for bargains.* This is not the way to get good men nor to fix the full responsibility for mal-administration upon the people's chosen prime minister."

These are the utterances of one who during two terms had been mayor of the city of New York and for two terms recorder of that city : and who for four years had been governor of the State.

No testimony, it seems to me, could be more satisfactory and convincing.

It is objected that this bill does not go far enough, and that there should be a re-arrangement of the terms of these officers; also that some of them should be made elective. This is undoubtedly true ; and I shall be glad to

approve further judicious legislation supplementary to this, which shall make the change more valuable and surround it with safeguards in the interests of the citizens. But such further legislation should be well digested and conservative, and above all not proposed for the purpose of gaining a mere partisan advantage.

I have not referred to the pernicious practices which the present mode of making appointments in the city of New York engenders, nor to the constantly recurring bad results for which it is responsible. They are in the plain sight of every citizen of the State.

I believe the change made by the provisions of this bill gives opportunity for an improvement in the administration of municipal affairs; and I am satisfied that the measure violates no right of the people of the locality affected, which they now enjoy. But the best opportunities will be lost and the most perfect plan of city government will fail, unless the people recognize their responsibilities and appreciate and realize the privileges and duties of citizenship. With the most carefully devised charter, and with all the protection which legislative enactments can afford them, the people of the city of New York will not secure a wise and economical rule until those having the most at stake determine to actively interest themselves in the conduct of municipal affairs.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 177, AMENDING THE  
CHARTER OF THE CITY OF ALBANY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *March 26, 1884.**To the Assembly:*

I return herewith, without my approval, Assembly bill No. 177, entitled "An act to amend section three of title two of chapter two hundred and ninety-eight of the Laws of eighteen hundred and eighty-three, entitled 'An act to provide for the government of the city of Albany, passed April twenty-third, eighteen hundred and eighty-three.'"

This bill purports to amend the charter of the city of Albany. It has been in my hands once before and was recalled for amendments. The result is that it is now presented to me in such a form that no sane man would attempt to interpret it. After providing that in case certain apportionments or assessments are set aside for irregularity, a new apportionment or assessment shall be made, the following language is used :

"Provided that all bridges constructed on the line of any street or avenue, or avenue culverts constructed over or along the line of any living constant stream of running water, and the maintaining and repairing of the same within the city limits; and the amount of money required to defray the expense thereof, shall not exceed twenty thousand dollars in any municipal year, and said sum shall be raised by tax in the same manner as other city taxes are levied and collected; also ordinary repairing the carriage-way at the intersection of all paved streets, and the carriage-way of all streets now paved or that may be hereafter paved with granite blocks or other kind of square stone pavements, and the repairing of

the carriage-way of any unpaved earth, planked or macadamized streets, and the cross-walks thereof, except as otherwise specially provided by law, or where by law the expense thereof is to be paid by some other corporation or individual, shall be charged upon said city; and the amount of money required to defray the expense thereof, which (except in the case of the bridges and culverts) shall not exceed five thousand dollars in any municipal year, shall be raised by tax in the same manner as other city taxes are levied and collected."

A few more amendments of this description would make the charter of Albany a chaotic mass of absurdities.

GROVER CLEVELAND.

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VETO, ASSEMBLY BILL No. 82, TO AUTHORIZE  
THE VENICE TOWN INSURANCE COMPANY TO  
CHANGE ITS PLACE OF BUSINESS.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, March 26, 1884.

*To the Assembly:*

I return, without approval, Assembly bill No. 82, entitled "An act authorizing the Venice Town Insurance Company to change the location of its business office."

I am not aware that there is any necessity for the passage of this bill. If the Venice Town Insurance Company desires to change the location of its business office from East Venice to Genoa, I think there is no objection to such a transfer. And if it is necessary or proper that such a change of location should be sanctioned by law, a general statute should be passed vesting in the directors of such institutions the power to make the change.

GROVER CLEVELAND.

VETO, SENATE BILL No. 104, TO AUTHORIZE THE BALDWINSVILLE UNION FREE SCHOOL DISTRICT TO BORROW MONEY. .

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 7, 1884. }

*To the Senate:*

I return, without approval, Senate bill No. 104, entitled "An act to authorize the board of education of the Baldwinsville Union Free School District to borrow money."

A general law has been enacted at the present session of the Legislature, being chapter 49 of the Laws of 1884, which permits the borrowing of money, and the issue of bonds therefor by the boards of education of union free school districts, when authorized by the voters of the districts, in cases like this provided for by the bill herewith returned.

This enactment obviates the necessity of conferring such authority by special legislation.

GROVER CLEVELAND.

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VETO, ASSEMBLY BILL No. 262, TO INCORPORATE THE CITY OF AMSTERDAM.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 7, 1884. }

*To the Assembly:*

I return, without approval, Assembly bill No. 262, entitled "An act to incorporate the city of Amsterdam."

This bill was first presented to me for my official action

on the twentieth day of March last. A very slight examination developed the fact that it contained various provisions which were objectionable, while the usual number of errors were apparent in its construction. At my suggestion the bill was recalled by the Legislature for amendment and correction. Certain alterations having been made, the measure is again before me.

It still contains provisions which I cannot approve.

By section ninety, the city is authorized to appropriate the land necessary to make, lay out or open streets and other improvements. It is provided that notice of the determination to take such lands shall be given to the owners thereof, by publishing the same in two newspapers, once in each week for two weeks, in which shall be specified a day on or before which such owners may file their claims for damages by reason of the taking of such lands. It is further provided that in case no claim shall be so filed, the owner of the land to be appropriated, shall be deemed to have waived all claim to damages, and to have consented and agreed to such improvement.

I am of the opinion that these provisions do not answer the requirements of the Constitution, to the effect that private property shall not be taken for public use without just compensation. And if this were not so, I am entirely convinced that the plan proposed in this charter for the appropriation of land belonging to the citizen does not sufficiently protect private rights.

Section ninety-five provides that in case the whole of any land subject to any lease or agreement shall be taken for such improvements, the lease or agreement shall, upon the confirmation of the assessment for such improvements, cease, determine and be absolutely void; but that in case a part

only of such land shall be taken, the county judge of Montgomery county "may, on application in writing of either or any of the parties interested in such lease or agreement, appoint three disinterested freeholders to determine the rents, payments and conditions which shall be thereafter paid and performed under such lease or agreement in respect to the residue of such real estate; and the report of the freeholders, or any two of them, on being confirmed by the court, shall be binding and conclusive on all persons interested in such real estate."

It is hardly necessary to point out the injustice that would be likely to result from the opportunity given by one party to a contract without any notice to the other, to have men appointed to make a new contract binding and conclusive on all persons to be affected thereby. It seems to me to be in direct and flagrant violation of principle and right.

Section ninety-six contains provisions relating to assessments for improvements which are of doubtful expediency, and which certainly appear to be much confused and entirely inconsistent with each other.

Section one hundred and four of title ten attempts to provide for the expense of maintaining a bridge between the town of Amsterdam and the town of Florida. In one part of the section it declares that the expense shall be borne by the proposed city and the town of Florida, in the ratio which the assessed valuation of the city property bears to that of the town; but an amendment has been added to the section, which, if it means anything, establishes an entirely different standard by which the expense of maintenance shall be apportioned between the said city and town.

Section one hundred and twenty-three permits "the mayor, recorder and aldermen, and each and every of them, and

the constable and policeman" at any and all times to arrest, or cause to be arrested, with or without process, all vagrants or disorderly persons, or any person who may be found by them committing any crime, misdemeanor or breach of the peace; and it gives them power while in pursuit or search of any such person, to enter, or cause to be entered, with or without process, any building or place in said city.

This section, if allowed to become operative would permit practices dangerous to the liberty of the citizen and subversive of his most valuable rights.

There are other serious imperfections in this charter which will not be here specifically noticed. Since it was first presented to me, the village of Amsterdam has elected officers for the ensuing year, and I have no doubt the residents of the village, who do not appear to be unanimously in favor of the proposed change, will do quite well if they are obliged to live another year under a village government.

It is well for the people living in villages, who are ambitious to secure a city charter, to understand that the enjoyment of urban residence necessarily entails a great increase of expense and taxation. This being the case, it would be proper, it seems to me, if such a change could not be made without a formal expression of the people on the subject. In any event the matter should be fully and freely discussed, and if a city charter is to be allowed, it should be prepared with the greatest care and deliberation, and solely in the interest of those to be governed thereby.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 347, RELATIVE TO A  
CLAIM AGAINST THE CITY OF BINGHAMTON.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 8, 1884.

*To the Assembly:*

I return herewith, without approval, Assembly bill No. 347, entitled "An act to authorize the common council of the city of Binghamton to submit to the taxpayers of said city the question whether a judgment recovered against William Whitney, as superintendent of streets and city property, shall be paid by said city."

This bill provides that the common council of the city of Binghamton shall order a special election, at which the question shall be submitted whether the sum of one thousand six hundred dollars and fifty-seven cents shall be paid by said common council to Edward L. Bennett, or his attorney, being the amount of a judgment obtained by said Bennett against William Whitney for an injury incurred on one of the streets of said city while the said Whitney was superintendent thereof. It is further provided that if a majority of the votes cast at such election shall be for "Special Tax," the common council shall at once, if it shall deem best, pay the said judgment, or the amount thereof may be inserted in the next following tax roll of said city, to be collected as other taxes are collected and paid over when so collected.

I suppose the judgment which it is proposed to pay, if authorized by a majority of the voters, was recovered against the superintendent of streets for an injury sustained by the unsafe or imperfect condition of one of the streets under

his charge, and that the recovery was based upon the negligence of such superintendent. It is quite clear that, under the bill, the judgment is to be paid with the money of the city derived from taxation.

The charter of the city of Binghamton provides that the municipality "shall not be liable to any person or corporation for the malfeasance, misfeasance, nonfeasance or negligence of any officer or officers, agents, servants or employes who may be elected, appointed or employed pursuant to any of the provisions of this act."

Under this charter, and presumably with full knowledge of this unusual provision, which absolves the city from all liability for his neglect and makes him solely responsible for the same, the superintendent accepted office. And whatever apparent hardship there may be in his present condition, or whatever inclination there may be on the part of a majority of the voters of the city to relieve him from the liability he has incurred, or to pay to the plaintiff in the judgment the amount of the same, it must be conceded that the object of this bill is to give the money of the city, in the absence of any obligation on its part, to an individual, or to allow the city to incur a debt for that purpose.

This, it seems to me, cannot be permitted under section 11, article 8 of the Constitution of the State, which provides that "no county, city, town or village shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual, association or corporation. \* \* \* Nor shall any such county, city, town or village be allowed to incur any indebtedness, except for county, city, town or village purposes."

Of course, if the project to pay the judgment mentioned in the bill, from the city funds, is within this prohibition of the

Constitution, it is not aided by the affirmative vote of a majority of the electors who may pass upon the question.

There is now in the charter of the city of Binghamton a very broad provision permitting the raising of money by special tax, after a favorable vote of the people, when two-thirds of the common council "shall be of the opinion that the interests of the city require the expenditure of money for any extraordinary or special purpose." There is reason to suppose that this existing provision of the charter could be made as effective to accomplish the purpose desired as the bill under consideration.

In any view of the question, I am of the opinion that the bill is unconstitutional and should not become a law.

GROVER CLEVELAND.

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VETO, ASSEMBLY BILL No. 143, AMENDING THE ACT INCORPORATING THE GENESEE CAMP GROUND ASSOCIATION.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 9, 1884. }

To the Assembly :

I herewith return, without approval, Assembly bill No. 143, entitled "An act supplementary to chapter 252 of the Laws of 1857, entitled 'An act to incorporate the Genesee Camp Ground Association.'"

The original act by which this association was created, appoints nine trustees, and provides the manner in which their successors may be elected, and fixes their terms of office.

The bill herewith returned names in its first section nine

other persons who are constituted trustees of this association in addition to those authorized by the original act. They are directed to meet during the annual meeting of the association in the present year and divide themselves into three classes of three members each. It is provided that the term of office of the first class shall expire at the annual session of the Genesee Conference of the Methodist Episcopal Church, held in the year 1884, and the term of the other classes respectively, at the same time in the years 1885 and 1886. The said conference is authorized to elect three trustees at its annual session in 1884, and the same number at every annual session thereafter to fill vacancies occasioned by the expiration of the terms of offices of the newly constituted trustees.

I think the provision of the bill that the terms of the trustees therein named, shall expire at the annual session of the Genesee Conference is objectionable because it fixes an uncertain time for such expiration.

Besides, there is absolutely no term fixed for such trustees as shall be elected by the Conference to fill the places of those named in the bill; and I see nothing to prevent the indefinite continuance in office of the trustees thus elected.

This could not have been the intention of the promoters of this measure.

I can see no advantage to be gained by the proposed increase of the trustees of this association; but if such increase is for any reason expedient, the nine trustees to be selected by the Conference should not hold their offices for life as against an equal number elected under the original law, who hold for a definite time, and who are selected by the parties apparently more immediately connected with the association.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 284, TO PROVIDE FOR  
THE DISSOLUTION OF RELIGIOUS, BENEVO-  
LENT AND OTHER ASSOCIATIONS.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 14, 1884. }

*To the Assembly:*

I return, without approval, Assembly bill No. 284, entitled "An act to amend chapter three hundred and nineteen of the Laws of eighteen hundred and forty-eight, entitled 'An act for the incorporation of benevolent, charitable, scientific and missionary societies,' and the several acts amendatory thereof."

This bill proposes to add to the law of 1848 two new sections, which provide for the dissolution of all corporations organized by virtue of said act, and the application of the property owned by them, or the proceeds thereof, after payment of debts, to any such religious, benevolent, charitable or other object or purpose, as the trustees, in a petition to be presented to the court, may indicate, and the said court shall approve. It provides that the proceedings may be instituted by a majority of the trustees or directors, when the corporation shall cease to act in its corporate capacity, or is desirous of closing its affairs. A notice of the time and place of such intended application to the court is, by implication, required to be published once in each week for four weeks in two newspapers. This seems to be the only notice to be given to the stockholders or members of the corporation of the proposed movement. There is no provision that such stockholders or members may interpose any objections or be in any manner heard, nor is any way pointed out for the court

to proceed in making an inquiry into the facts necessary to be established for a proper adjudication. And yet the object of the proceeding is not only to dissolve the corporation, but to devote the surplus of its property, after paying debts and the expense of the proceeding, to any object or purpose which the trustees may indicate and the court approve.

The class of corporations affected by this bill, is by an amendment of the original law passed in 1881, authorized to hold real estate of the value of two hundred thousand dollars, and personal property to an equal amount.

The property of such institutions is really beneficially vested, I suppose, in the members of the corporation ; and it is the duty of the trustees to manage the property and affairs of such corporation for the best interests of the members. They are not put in place to dissolve the corporation, nor to distribute its property. When that becomes proper or desirable, the movement should, in my opinion, be inaugurated by the members of the corporation. At all events, they should have ample opportunity to be heard in such cases before their corporation is dissolved and their property distributed, it may be, to an object or purpose entirely foreign to the design of the corporation.

Another objection to the bill is found in the fact that a mode is already provided for the voluntary dissolution of the corporations described therein by title eleven, chapter seventeen of the Code of Civil Procedure. And if the features of this bill touching the diversion of the property of such institutions should be adopted, they ought to be much better guarded in the interests of the members of the corporation and incorporated in that chapter and title of the Code.

GROVER CLEVELAND.

VETO, SENATE BILL No. 88, RELATING TO  
CERTAIN STREETS IN TROY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 21, 1884. }

*To the Senate:*

I return herewith, without approval, Senate bill No. 88, entitled "An act to amend section nine of title four of chapter one hundred and twenty-nine of the Laws of eighteen hundred and seventy-two, as amended by section nine of chapter eight hundred and thirteen of the Laws of eighteen hundred and seventy-three, relative to the city of Troy."

This bill amends a section of the charter of the city of Troy, which directs that the expense of widening a street shall be assessed upon the property benefited thereby, by adding to said section a provision that if the common council of the city shall order the widening of Jacob and North Third streets, where they intersect, the expense thereof shall be assessed upon the whole city.

The insertion in the charter of a city of provisions which only relate to a single emergency or supposed necessity, and which after the same are answered, become useless surplusage, is exceeding objectionable. A charter, which is the fundamental law of a municipality, should, ordinarily, contain only general provisions, applicable to all the needs of the city, and should not be amended to suit a single case.

The widening of the streets mentioned, if necessary at all, has been rendered so by the occupancy of one of said streets by the tracks of a railroad company. The effect of the amendment proposed in this bill is to release the said company from a part of the expense of the improvement, which,

by the present charter, would be assessed upon it, and charge the same upon all the taxpayers of the city. It seems to me that the corporation which, for nearly twenty years, has enjoyed the privilege of occupying this street with its tracks, should not escape, by special legislation, any part of its share of taxation consequent upon the necessary restoration of such street to its usefulness as a public highway.

I am confirmed in my opinion that this bill should not become a law by the objections of the local authorities of the city of Troy, as represented by its mayor and city attorney, both of whom have protested against the measure.

GROVER CLEVELAND.

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VETO, ASSEMBLY BILL No. 362, TO AUTHORIZE THE  
TOWN OF WESTCHESTER TO BORROW MONEY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 23, 1884. }

*To the Assembly:*

I herewith return, without approval, Assembly bill No. 362, entitled "An act authorizing the town of Westchester to borrow money to improve therein highways."

The bill provides that a sum not exceeding sixty thousand dollars may be borrowed by the town of Westchester at any time within five years, to be applied toward the improvement of such highways as certain commissioners, to be appointed by the supervisor of said town, may direct. It is further provided that the bonds of the town for the money so borrowed shall be issued by the supervisor in such sums as shall be directed by the said commissioners, upon their

certificate that the amount for which bonds are required to be issued is due and owing, or that contracts have been made by them for such amount. In case vacancies occur in the commission, the same are to be filled by the surviving members thereof.

The scheme thus provided for this large increase of town indebtedness seems to me to ignore the taxpayers affected thereby, and to be very objectionable. The supervisor creates the commission which dictates the amount to be borrowed, and the time when bonds shall be issued therefor, and selects the localities where the money thus raised shall be spent. I do not see that the people, except as it may be claimed that they are represented by the supervisor, have any hand in the matter except to pay the taxes.

This town has already a large bonded indebtedness and its taxpayers are grievously burdened; for their actual necessities no such expenditures for highway purposes as are contemplated by this bill are required; and in large numbers the inhabitants of the town, who would be compelled to bear the increased taxation, remonstrate against this bill becoming a law.

These reasons seem to abundantly justify my disapproval of the measure.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 437, RELATING TO  
THE APPOINTMENT OF BRIDGE TENDERS IN  
ROCHESTER.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 25, 1884.

*To the Assembly:*

I return, without approval, Assembly bill No. 437, entitled "An act in relation to the appointment of bridge tenders on swing or lift bridges in the city of Rochester."

This bill authorizes the executive board of the city of Rochester to appoint the tenders of the swing or lift bridges over the canals in that city; and provides that if complaint is made by the State officers having charge of the canals that such tenders are not performing their duties satisfactorily, they shall be removed and others appointed by said board.

These bridge tenders are charged with the immediate care and management of the swing and lift bridges constructed over the canals; and it is their duty to draw or lift such bridges to enable all boats navigating the canals to pass. Such bridges are constructed only by consent of the State, as represented by the superintendent of public works; and the sole object of the appointment of bridge tenders is to permit the navigation of the canals, which otherwise would be prevented by these bridges.

Section three of article five of the Constitution of the State provides that persons "employed in the care and management of the canals" (with certain exceptions which do not include bridge tenders), "shall be appointed by the superintendent of public works, and be subject to suspension or removal by him."

I am of the opinion that the duties devolved upon the persons whose appointment is vested in the executive board of the city of Rochester by the terms of the bill under consideration, are such that they should be regarded as "persons employed in the care and management of the canals," and that the Constitution does not permit their appointment by any authority except the superintendent of public works.

Chapter 488 of the Laws of 1881, permits the erection of bridges over the canals by towns, cities and villages only with the consent and under the direction of the superintendent of public works, and provides that if by reason of any such bridge being a hoist, lift or swing bridge, the constant attendance of bridge tenders shall be required to manage and work said bridge, the superintendent of public works shall alone have the power of appointment and removal of such tenders.

And the permit given by the superintendent for the erection of such bridges uniformly contain a provision that they shall be maintained and operated under his control and supervision.

It is thus shown to be the policy of the State that these structures, the proper operation of which is so essential to the successful management of the canals, and the careless or improper operation of which might result in damage to individuals, for which claims would be made against the State, should be in charge of its servants and agents selected and approved by its officers.

This is so manifestly proper and prudent that it seems to me very important that the present control of the State over the operation of these bridges should not be impaired.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 483, APPROPRIATING  
MONEY FOR THE ORANGE COUNTY REFER-  
ENCE LAW LIBRARY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 28, 1884. }

*To the Assembly :*

I return, without approval, Assembly bill No. 483, entitled "An act to amend chapter four hundred of the Laws of eighteen hundred and eighty, entitled 'An act making appropriations for the several judicial district libraries.' "

The law which this bill amends appropriated from the funds of the State nearly fifteen thousand dollars for the purchase of books for ten different law libraries, which, from time to time, have been established and are now maintained by the State. The particular section amended by the bill before me appropriates six hundred dollars to be paid annually to each of said libraries. The amendment consists in adding the Orange County Reference Law Library, located at the city of Newburgh, to those attempted to be provided for by the original law. But in the year 1881 the Legislature, instead of regarding the limit of six hundred dollars fixed by its predecessor, again appropriated nearly fifteen thousand dollars for the purchase of books for this class of libraries. In 1882 it appears that but six thousand dollars was appropriated for such purpose, and in 1883 eleven thousand dollars was thus appropriated.

So far as section three of the law of 1880, which is amended by this bill, can be considered as an appropriation, it could not bind, and was not even followed by subsequent Legislatures; and by the terms of the Constitution no money

could be paid out of the State treasury pursuant to such law, except within two years from the date of its passage. I consider this section of that law as spent and of no practical effect; and if the amendment thereto proposed by the bill under consideration has any force, it simply operates as an appropriation of six hundred dollars to a law library, which for the first time seeks to gain a place among objects of the same character for which State funds are annually appropriated.

There are seven law libraries owned by the State now in use by the several judges of the Court of Appeals, and there are at least nine others, one located in each judicial district, except the sixth, which seems to have two. It is possible that all are not included in this statement, but it must be agreed on, I think, that when the State maintains sixteen law libraries for the use of its lawyers and judges, such exceedingly questionable generosity should not be extended.

GROVER CLEVELAND.

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VETO, ASSEMBLY BILL No. 315, AMENDING CHAPTER 46 OF THE LAWS OF 1848, RELATING TO MANUFACTURING CORPORATIONS.

STATE OF NEW YORK.

*EXECUTIVE CHAMBER,*

ALBANY, April 28, 1884. }

*To the Assembly:*

I return Assembly bill No. 315, entitled "An act to extend the operation and effects of chapter forty-six of the Laws of eighteen hundred and forty-eight, entitled 'An act to authorize the formation of corporations for manufacturing,

mining, mechanical, chemical, agricultural, horticultural, medical or curative, mercantile or commercial purposes;" without approval.

The object of this bill is to promote the formation of corporations for the purpose of operating machinery for securing a uniform standard of time by means of a central clock, regulating and controlling subsidiary clocks, under the provisions of chapter forty of the Laws of 1848, which was originally entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes."

This title was amended in 1866 in such manner as to read as recited in the title to this bill. But inasmuch as the act of 1848 is only mentioned as the law by which this new kind of corporation shall be governed, I think it should be referred to as a means of identification, by its original instead of its amended title. This course has been adopted, I find, in all the laws passed since the change of its title extending its operation to other purposes.

This law of 1848 has been amended so often, and in such a heedless way, that there seems to be quite some difficulty in discovering its exact condition; and I judge by the various notes found at the foot of page 1731, volume two, second edition of the Revised Statutes, that it is not absolutely safe to rely upon it.

In 1875, owing probably to the confusion in which the statutes on this subject were found, a law was passed for the formation of business corporations. This seems to be a plain and simple statute applicable to the formation of nearly every kind of corporation, and I suppose was really intended to take the place of all prior statutes on this subject. Under this law, the corporation sought to be

authorized under the bill herewith returned, could be easily and much more safely organized without any legislation on the subject.

GROVER CLEVELAND.

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MEMORANDUM FILED WITH SENATE BILL No. 296.

THE STREET RAILROAD BILL. APPROVED.

STATE OF NEW YORK.

*EXECUTIVE CHAMBER,*

ALBANY, *May 6, 1884.* }

*Memorandum filed with Senate bill No. 296, entitled "An act to provide for the construction, extension, maintenance and operation of street surface railroads and branches thereof in cities, towns and villages." Approved.*

This bill, in its various stages, has given rise to exceptional discussion, and the hopes and expectations of many people regarding the action of the Legislature and of the executive in disposing of the measure have given me proof that extensive private interests are involved. Painful rumors have been rife touching the methods employed by rival parties to accomplish legislative results. These, I hope, are baseless, but they have, I fear, led many honest men to believe that the measure is wholly iniquitous and vicious. I am inclined, for their information, to state, perhaps imperfectly, but as briefly as possible, the general features of the bill and some considerations which have constrained me to approve the same.

The Constitution of the State prohibits the passage by the Legislature of any private or local bill "granting to

any corporation, association or individual the right to lay down railroad tracks."

It is also therein provided that the Legislature shall pass general laws providing for the cases enumerated in the section containing the above prohibition, and this requirement is supplemented by the following restriction:

"But no law shall authorize the construction or operation of a street railroad except upon the condition that the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having the control of that portion of the street or highway upon which it is proposed to construct or operate such railroad be first obtained, as in case the consent of such property owners cannot be obtained, the General Term of the Supreme Court in the district in which it is proposed to be constructed may, upon application, appoint three commissioners, who shall determine, after a hearing of all parties interested, whether such railroad ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners."

It is apparent that any law which permits the laying down of a street railroad track must be general in its character, and not "private or local."

It is also quite plain that, under the Constitution, the duty is enjoined upon the Legislature to provide, by law, for the construction of street railroads, and that any law passed for that purpose must be in accordance with the specifications of the Constitution above quoted.

Not only is it the duty enjoined by the Constitution upon the Legislature to provide the people of the entire State with laws under which this means of convenient transit may be furnished them, but the necessity of such legislation is freely conceded. Every year efforts have been made to

supply this want, but the apparent impossibility of freeing measures, introduced or passed, ostensibly for that purpose, from objectionable features, have caused their miscarriage.

The result of the last attempt in this direction is now presented to me for official action. I cannot avoid the conviction that it is my duty to examine this bill uninfluenced by any prejudices which might well be aroused from the alleged circumstances connected with its passage, and without giving undue weight to certain local and private interests; and if, upon a careful consideration of all the provisions of the bill, it seems to me to be drawn in conformity to constitutional requirements, and to be a measure which all the people of the State need and are entitled to at the hands of the Legislature, I conceive it to be an obligation resting on me to give it effect, provided, always, that it does not violate any private rights, fixed and vested.

On the 29th day of May, 1883, a bill which had been passed by the Legislature, and which purported to be a general bill authorizing the construction of street railways, was disapproved for the reason that it seemed to me to contain provisions calculated to subserve special interests instead of the welfare of the whole people, and appeared to be constructed with but little reference to the territory of the entire State. In the memorandum filed with the disapproval of the bill, I fully committed myself to the statement that a general law providing for the construction of street railroads should be enacted, but in connection with such statement, used the following language :

“It cannot be difficult to frame a bill which in spirit, as well as in strict construction, would be a general law, protecting all localities alike, and avoiding the evils sure to follow a further attempt, under the guise of a general statute, to answer only private and local purposes.”

The bill under consideration seems to me to nearly fulfill the requirements above indicated, and to meet the demand for a law permitting the extension of street railroad facilities throughout the State. The objectionable features of the bill, disapproved in 1883, appear to be wholly eliminated.

The consent of the local authorities and the property owners upon the street are not available unless they are obtained after the passage of the act. This is not only just to the local authorities and present property owners, but it places all those desiring to construct railroads under the act upon an equal footing. No consent heretofore obtained under different circumstances from the predecessors of local authorities or owners can be made available, as they ought not.

The provision requiring the public authorities to give fourteen days' notice in two newspapers before acting upon any application for consent to the construction or extension of a road is a prudent and valuable feature of the bill, taken in connection with the provision that, at the option of the authorities of any city or village, the franchise asked for may be sold at auction. The publicity thus given to the proposed enterprise, if it is deemed of value, will stimulate competition and prevent the local authorities from giving away a franchise which should be sold to the highest bidder.

The tax which may be imposed upon the gross earnings of roads constructed or extended in cities and villages, to be paid into the treasury of such cities and villages, and the stringent provisions contained in the bill to compel its prompt payments, commend the measure as one likely to yield to the people of the localities a substantial return for the franchises conferred.

The power given to the local authorities to make reasonable regulations as to rate of speed, mode of use of tracks, and

the removal of snow and ice, and to enforce compliance therewith under heavy penalties, supplies in this bill an element of local control not heretofore so completely provided for, and manifestly essential for the protection of the public.

The limitation of fare to five cents on all roads to be constructed under the act, or to the present authorized rates upon such as have already been constructed, and their extensions, gives to the public the benefit of carriage on all extensions of existing roads without additional fare, and provides a cheap maximum rate for all new roads.

The provision that roads may use each others tracks and lines for a distance of one thousand feet is just, and will prevent existing roads from unreasonably obstructing the completion of new ones, which require the use of the tracks of such companies to connect parts of the proposed new line. A less distance would prevent new roads from using existing tracks for a sufficient distance to pass long blocks.

All street surface railroad companies are permitted by the act to use any kind of motive power except locomotive steam power. Thus the competition between horse roads and cable roads and roads seeking to introduce other motive power, except the steam locomotive, is left free and open to the choice of the local authorities and the property owners.

A further detailed statement of the provisions of this bill need not here be given, except as they are involved in the objections which are urged against it.

It is said that the consent of those owning one-half of the lineal feet fronting on the street in which the road is proposed, as well as those owning one-half in value, should be required; that the public interest in the city of New York would be better protected if the consent of the commissioners of the sinking fund or some other board should be

required, instead of the board of aldermen, and that Fifth avenue and Broadway should be exempted from the bill.

The answer to such objection is at hand. The bill follows the exact language of the amended Constitution in these respects. There would be no safety in doing less. And, as far as the objection touching the local authorities, whose consent is necessary, is concerned, the law now gives to the common council of the city of New York power "to regulate the use of the streets, highways, roads and public places, by foot passengers, animals, vehicles, cars and locomotives." As long as this remains the law, and as long as the Constitution requires that "the consent of the local authorities having control" of the street shall be obtained, it is hard to see how the consent of any other authority than the common council would comply with the Constitution. Waiving the question of the legal effect of the exemption of any street from the operation of the acts, I think such an exception would neither be consistent nor expedient.

The objection that existing roads should pay a per centage on the receipts from their entire line in case of an extension, it seems to me, is not tenable. Their existing lines were not built in contemplation of any such tax, and if they are extended under the act, it is more just and equitable to charge them with a tax on some portion of their receipts than on the whole. I know of no more fixed and definite rate than to put the tax upon such a proportion of their receipts as their extension bears to the entire line. This is the rule adopted in the act.

It is alleged that the bill permits a street railroad to be laid out and constructed along public parks, with the consent of the local authorities and one-half only of the prop-

erty owners on the opposite side of such parks. This is a misapprehension. The consent of the owners opposite is in addition to the consent required in other sections of the bill, and by the Constitution.

Objection is made that a company may, under the consent of the local authorities, occupy a street and delay the completion of its road unreasonably, in the meantime excluding other like enterprises. But it seems to me this bill guards with great care against such a state of things. All consent must be obtained after the passage of the act. Any consent given by the local authorities shall cease and determine at the expiration of one year, unless prior to that time the company shall have obtained and filed the necessary consents of the property owners or the determination of the commissioners provided for by the Constitution, in lieu thereof. I do not understand that such company can occupy a street at all until such consents are both obtained. It must begin the construction of its road within one year, and complete it within three years from the time of giving such consents, or its rights, privileges and franchises acquired under the act shall cease and determine. During the pendency of legal proceedings the Supreme Court is given power to extend the period for the performance of any of the required acts. Of course, this means the performance of any act which may be prevented by legal proceedings. I fail to see any valid objection to granting an extension in such a case or vesting the power to do so in the court.

Another objection opposed to the bill is based upon the language of its fifteenth section, which permits any street surface railroad to lease or transfer its rights, subject to all of its obligations, to run upon or use any portion of its tracks, to any other street surface railroad company which is

authorized to run upon such routes, upon such terms as shall be agreed upon by their board of directors, subject to the approval of their stockholders. If no such section were in the bill, I am of the opinion that such leases or transfers could be made by the directors alone under a law which was passed as long ago as 1839. It is wise and safe to give the stockholders a voice in the matter.

It is strongly urged that the bill should oblige the local authorities, in all cases, to put these franchises up at auction, and sell the same to the highest bidder. Such a provision might have resulted in no harm, though throughout the State in a large majority of cases, the price bid would have been nominal. The proposition that the sale at auction should be obligatory, gains much of its supposed force from the contemplation of the condition of affairs in the city of New York. But this legislation is for the entire State; and with the advertisement of application for franchises provided for in the bill, and the competition which would follow, if the same were of value, and with a close regard on the part of the local authorities to the interests of the people which they represent, the localities, I think, will be sufficiently protected. If the local authorities are determined to cheat and defraud their constituents by refusing to put up a valuable franchise at auction, they must, under this bill, do it in the broad light of day, and with a brazenness and boldness that would find a way to evade the most carefully framed law.

The last objection which I shall notice is to section sixteen of the bill, which prohibits the construction of any street railroad to run in whole or in part upon the surface of any street, under the provisions of chapter six hundred and six of the Laws of 1875. This is commonly called the rapid transit act, and though it has been in force nine years, with

no other law for the construction of surface street railroads, none has ever been built under that statute. It has, I think, been generally supposed that its provisions only authorized, or, at least, were only intended to authorize, the construction of elevated or underground roads. There has lately been formed, in the city of New York, a company for the purpose of introducing the cable system of propelling street cars in that city. At the instance of this company, I suppose, commissioners have been appointed by the mayor of the city of New York, under the rapid transit act, who have gone so far as to lay out routes in many of the streets of the city, amounting to about seventy-two miles, for the occupancy of the cable company. These proceedings, if carried to completion, would probably give to this company the occupancy of so many streets that any remaining routes would be of little comparative value. Its claim now is, that this bill, by preventing it from proceeding further under the act of 1875, inflicts upon it a great wrong and deprives it of rights to which it is fairly entitled.

Of course, these proceedings have not gone far enough to give this company any legal claim; but if the law under which it has proceeded is applicable to surface roads, and if in good faith they have done these things, which entitle it equitably to retain whatever advantages it has acquired, its claims should not be lightly disregarded.

On the other hand, a measure as complete as this bill, now before me, so well suited to the wants of all the people of the State, and so necessary to their convenience, embracing all interests except those of the cable company, should not be lost or destroyed, save for the most potential reasons.

This company has, under the provisions of this bill, the

same opportunity to organize, for the purpose of introducing their system upon the streets of the city, as any other company that may be formed using a different motive power. It has but to surrender the uncertain advantages which they may have acquired under a law of doubtful applicability to their professed wants, and proceed under a law which will give them a safe and sure footing. With this company in the field, claiming under rights derived from proceedings already had, litigation and dispute between it and corporations formed under the new law would surely follow, resulting in delaying construction by either company, and consequent inconvenience to the citizens. There is, I think, an advantage in having but one law under which this class of corporations shall be organized. Their obligations to the people and to the State under a single system are more definite and certain, and better understood.

If the section thus strongly objected to had been omitted, I am by no means sure I would have refused my signature to the bill on that account, but I do not think I am justified, upon a full consideration of all the circumstances, in disapproving the bill as now presented.

GROVER CLEVELAND.

MESSAGE, SPECIAL, RELATING TO ASSEMBLY  
BILLS Nos. 466 AND 467, RELATING TO THE  
REGISTER AND THE SURROGATE OF NEW  
YORK.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 12, 1884. }

*To the Assembly:*

I have examined Assembly bill No. 466, entitled "An act in relation to the office of register of the city and county of New York," and Assembly bill No. 467, entitled "An act in relation to the office of surrogate of the county of New York," and I am of the opinion that both of them should be recalled for amendment. I am led to make this suggestion for the reason that these bills belong to a class of remedial measures of great importance, and from the enactment of which valuable reforms are anticipated. It is manifest that their good effect should not be jeopardized or diminished by imperfection in their form, or by the omission of any provisions which tend to make them complete and effective.

In the bill relating to the office of register, subdivision sixteen of section four appears to be unintelligible. The language is as follows: "Every certificate other than that a paper for the copying of which he is entitled to a fee is a copy twenty-five cents."

I suppose the intention may be expressed in the following words:

"Every certificate other than to a paper, for the copying of which he is entitled to a fee, twenty-five cents."

Section five of the act provides for the giving of a bond for the faithful discharge of his duties by "the register

appointed or elected as successor to the present incumbent of that office in the city and county of New York."

Of course this should be made to apply to all registers hereafter elected or appointed.

Section ten, in relation to the keeping of accounts, is in the same form, and appears to need the same amendment.

In line nine of section five the word "clerk" is, by mistake, used instead of "register," in quite an important provision.

Sections ten and eleven both require a statement showing, among other things, "the fees, perquisites and emoluments which the register or his assistants *shall be entitled to demand from any person* for services rendered in his or their official capacity." There should, I think, be no such provision in the law; but, on the contrary, it should contain a positive direction to the register that he should give no credit to any person for fees, or that he should receive the same in advance and be responsible to the city and county for all fees earned by him.

The plan of this bill is to pay to the register a salary, and have the fees of the office turned into the treasury of the city and county. This officer, thus assured of his salary, will have no personal interest in collecting the fees of his office; and the city should be protected against an accumulation of very doubtful assets comprising numerous accounts against attorneys for register's fees.

Bill No. 467, relating to the office of surrogate, provides in its sixth section that after the passage of this act "the surrogate, the assistants to said surrogate, or other clerks, employes or subordinates in or attached to the office or court of surrogate, shall not charge or receive *to his or their own use and benefits*, or otherwise than for the benefits of said county, any fees, perquisites or emoluments for any services

rendered by him or them by virtue of his or their official positions, except as provided in subdivision one of section seven of this act."

Section seven provides that no fees, perquisites or emoluments shall be charged or received by the surrogate, or any of his assistants or subordinates, except as therein specified.

Then follows subdivision one, which is referred to in section six, as fixing the fees that may be charged and received *to their own use* by the surrogate, and his assistants and subordinates, which is in the following words :

" 1. When in a case prescribed by law, or in any other case, upon the application of a party, *he* goes to a place other than *his* office, or the court-room where *he* is required to hold court, in order to take testimony, *he* may charge and receive to *his* own use, ten cents for each mile for going and the same sum for returning."

This is the exact language of subdivision one of section 2566 of the Code of Civil Procedure. But by that section the mileage allowed is confined to the surrogate alone, and not to any assistants or subordinates. It was evidently intended to apply to counties embracing a large area, and to cases when the surrogate might be called upon to travel a considerable distance, involving an expense for which he should be reimbursed.

I can see no propriety in making this applicable even to the surrogate of the city and county of New York; and as it may be claimed that it applies under this bill to the subordinates as well as to the surrogate, it would seem to open the door to abuses.

I think all the provisions of the bill permitting any fees to be received by the surrogate or his subordinates, to his or their own use, should be stricken out, and that the same should be expressly prohibited.

There should also be inserted in this bill, in my judgment, a prohibition against the surrogate giving any credit for his fees and services, and holding him responsible to the city and county for all fees earned in his office.

I have not had an opportunity to examine the other bills in my hands, similar to those referred to, relating to the public offices in the city of New York, with such care as is necessary, to determine whether they contain similar imperfections.

I recommend that bills Nos. 466 and 467, which are above referred to, be recalled for amendment. And in view of the near approach of the final adjournment of the Legislature, I suggest that the other bills of a like character be also recalled or carefully examined by some party familiar with the subjects they embrace, so that fatal defects shall not be discovered when it is too late for amendment.

GROVER CLEVELAND.

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VETO, SENATE BILL No. 337, RELATING TO THE  
BROADWAY UNDERGROUND RAILWAY OF NEW  
YORK.

STATE OF NEW YORK.

EXECUTIVE CHAMBER, }  
ALBANY, May 13, 1884. }

To the Senate:

I return, without approval, Senate bill No. 337, entitled "An act extending and supplementing the rights, powers and duties heretofore possessed, conferred and imposed upon the Broadway Underground Railway Company."

My objections to this bill can, I think, be better understood after a statement of some of the provisions of the statute

which have heretofore been passed, and proceedings which have been taken touching the corporation to which said bill refers.

On the 1st day of June, 1868, an act was passed authorizing seventeen persons therein named "to lay down, construct and maintain one or more pneumatic tubes in the soil beneath the streets, squares, avenues and public places of the city of New York; and to convey letters, parcels, packages, mails, merchandise and property in and through said tubes for compensation, by means of vehicles, to be run and operated therein by the pneumatic system of propulsion."

The following provisions were also contained in said statute :

That the said pneumatic tubes should be so constructed as to have a mean interior diameter of not exceeding fifty-four inches.

That in the city of New York they should be located and laid under the supervision and direction of the Croton aqueduct department, at such depth below the surface and in such manner as should prevent any injury to or unnecessary interference with the surface of the streets, or any change or alteration in the existing sewers, water pipes or gas pipes.

That said tubes should not extend through any vault nor under any sidewalk fronting on private property, without the consent of and compensation to the owner of such private property, which compensation should be ascertained and determined, in case the parties could not agree, in the manner provided by the general railroad law.

That the persons named in the act should first lay down and construct one line of said tubes from the post-office in Nassau street, northwardly to Fourteenth street, which should be and continue in successful working operation for

the period of three months, as certified by the postmaster, mayor and comptroller of the city of New York, before any other lines of such tubes should be laid down or constructed.

That the Croton aqueduct department should establish and enforce such rules and regulations as to the number of men employed on any and all parts of the work of constructing said tubes, the time of making, keeping open and closing the necessary excavations and the laying of the tubes therein as should prevent, as far as possible, the obstruction of any street, square, avenue or public place, and secure the completion of each part or section of said work with the least possible delay, and that immediately upon such completion the surface and pavements of the streets, avenues, squares and public places should be restored to as good condition as they were before the making of any openings and excavations.

That within thirty days after the passage of the act, a meeting of the persons named therein should be called, at which they might determine to form themselves into a corporation under the act of 1848, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," and that upon the formation thereof, the said corporation should possess all the powers and privileges conferred by said act, and be subject to all the duties and obligations imposed therein not inconsistent with the provisions of the act of 1868. Pursuant to this provision, such a corporation was formed on the eighth day of August, 1868, which was called the "Beach Pneumatic Transit Company."

The next year, the act of 1868 was amended in such manner that it was no longer necessary that the pneumatic tubes therein mentioned should be laid under the super-

vision and direction of the Croton water department, leaving the subject to be governed by such provisions of the act as were left unimpaired by the amending act and by such rules and regulations as should be made by said water department "not inconsistent with the purposes of this act."

In 1873 a law was passed giving authority to the Beach Pneumatic Transit Company to construct, maintain and operate an underground railway for the transportation of passengers and property in the city of New York extending from the Battery, or Bowling Green, under Broadway to Madison square, and along various streets and avenues in said act specified. It was provided that this underground railway should be so constructed and maintained by means of tubes of enlarged interior diameter sufficient for the construction of a railway or railways therein.

This law is entitled "An act supplemental" to the two acts already referred to.

It provides that the tubes therein permitted to be laid shall, as far as practicable, follow the center of the streets, and shall not occupy in the aggregate a greater space than thirty-one feet in width by eighteen feet in height; that the outer walls of said tubes shall not approach within two feet of the curb line nor within eighteen feet of the building line of the street. A board of engineers is provided for, one of whom is named in the bill, and the other two to be appointed by the Governor, who shall see that the said tubes and railways are constructed in a thorough and workmanlike manner, that proper materials are used, that all needful precautions are taken by the company to prevent damages to private property, interruption to travel, and unnecessary interference with the sewers, water pipes and gas pipes, and that suffi-

cient space is provided or allowed to remain, for proper sewerage and the laying of the gas pipes and water pipes, along the route of the tubes.

By this act the corporation is forbidden to interrupt the supply of water or gas or the flow of the sewers, and it is provided that all changes or alterations in the sewers, water pipes or gas pipes that may be necessary, shall be done under the supervision of the department of public works, but at the expense of the company; that during the construction of the works the travel through the streets over said works, and through the streets intersecting the line of said works, shall not be interrupted at any time except by special permission of the department of public works, and the board of engineer commissioners provided for by said act; that in working or excavating the said company shall, at its own cost and expense, make the foundation of every building adjoining or near said excavation firm and secure; that the said corporation shall commence the construction of their works within six months after the passage of the act, and complete the same to Fourteenth street within three years, and the whole work within five years thereafter; that the capital stock of said corporation shall be ten millions of dollars, and that before entering upon the work it shall be all subscribed for, and ten per cent. paid in, or other financial arrangements made by said company to insure the completion of said work; that before the said company shall commence work it shall execute and deliver to the mayor of the city of New York a bond, with sufficient sureties, in such sum as the board of engineer commissioners shall determine, not less than two hundred and fifty thousand nor more than five hundred thousand dollars, conditioned that the said company and its sureties shall be

bound to pay to any and all persons or corporations owning lands along the line of the road any and all direct damages and injury that the property of said city, or persons or corporations shall sustain by reason of the construction of said road, and that said company shall restore the streets and avenues to as safe and as good condition as the same were before the commencement of work thereon.

In the year 1874 the name of the corporation was changed from the "Beach Pneumatic Transit Company" to the "Broadway Underground Railway Company," and the time for the completion of its road extended. Said company was also allowed to construct its tunnels and railways one foot larger than was provided by the law of 1873.

In the year 1881 another law was passed still further extending the time for the completion of the work.

These several statutes have been thus referred to for the purpose of showing what protection was furnished the people of the city of New York and the municipality itself against loss and damage when the scheme was to construct a tube fifty-four inches in diameter, and thereafter railway tracks in a tube or tunnel laid below the center of the streets and occupying a space not exceeding thirty-one and thirty-two feet in width and eighteen feet in height.

The bill now under consideration, instead of the appropriation of so small a part of the most important thoroughfare in the city of New York, proposes to excavate next to the house lines a distance of not less than ten feet on each side of Broadway, for the purpose of constructing a sub-surface sidewalk under the walk, as now constructed, and to excavate all the rest of the street between the outer lines of such sub-surface sidewalks to the distance of not less than sixteen feet. The substance and material of the street

is to be removed, and in its place it is proposed to put an artificial structure, upon the roof of which is to be supported the surface of a new highway or thoroughfare for ordinary purposes; and beneath this roof are to be constructed the railroad tracks of the company. For the purpose of affording light and air to the road-bed and the sub-surface sidewalks and other subterranean structures of the company, it may keep and maintain open spaces not exceeding six feet in width from and along the house line on each side of the street, providing it shall have or supply necessary means of entrance and exit to and from the surface sidewalks into and out of all buildings along its route. Its trains may be drawn by electric or other motive power not emitting smoke, cinders or steam, causing noise or annoyance. It may excavate any cross street for the purpose of housing or storing its cars and other property, and for removing material in the course of the construction of its works, and may build tramways for that purpose either upon or beneath such cross streets. The company has full power and authority to remove all sewers, water, gas, steam and other pipes, as well as all wires, tubes and other obstructions to the necessary work of the construction of its road-bed and of the sub-surface sidewalks or any part thereof, and shall, at its own expense, remove and place the same within subways to be constructed for their reception along the road-bed or under the sub-surface sidewalks. During the process of construction, the said company may sustain the surface of the sidewalks and streets by either temporary or permanent structures, or may substitute therefor temporary bridges or means of passage for foot passengers and vehicles.

It must be conceded that this bill contemplates a stupendious work involving a very serious interference with the rights of the present occupants and owners of property abutting on the streets of the city, and greatly affecting the interests of the municipality.

Those doing business on Broadway are quite generally occupying, by license from the city or by its sufferance, the space under the present sidewalk for business purposes. For a depth of ten feet, at least, from the surface, this will be taken from them by the operations of this company. An open space of six feet in width may be made by the company between their buildings and the sidewalks fronting them ; and they are to content themselves with such means of ingress and exit as shall be furnished them under the provisions of the bill. They are in their business to be subjected to whatever of annoyance may be caused by the operation of the proposed railroad in close proximity. The danger to the foundations of the buildings along the excavation may not be entirely imaginary, though I do not regard it as necessarily serious.

But considering all the real and substantial elements of loss and damage that will ensue, we naturally seek in the bill for some provision requiring the consent of the persons likely to be injuriously affected, before the street in which they have a direct interest is excavated and carried away, and before they are deprived of the other rights and privileges to which they are entitled as abutting owners.

The interests of such owners in the surface of the streets in front of their property, their rights to its appropriation only to the ordinary purposes of its maintenance, are fully recognized by a constitutional provision, which requires the consent of a majority of such owners, or an adjudication by

the court, before such streets can be used for the purposes of a street railroad. It is not easy to distinguish the difference in theory between the interests of abutting owners in the surface of the street and the soil beneath it, especially as against a project to dig up such soil and carry it away. And when we consider that this will result in the actual curtailments of the space used and occupied by such owners for business purposes, it certainly seems that this proceeding should more require their consent than a partial appropriation of the street. And yet we look in vain through this bill to find any provision requiring such consent.

If their consent is not to be obtained, there should surely be ample provision for the payment of all damages they may sustain by reason of the appropriation of the streets which is contemplated by this company.

But the assurance that such payment is to be made does not appear to be very satisfactory. The statute of 1873, which permitted the construction of a railroad in a tube to be laid in the center of the street, provided that the company should "be liable to the owner or owners of any wall, building, structure, or lands or other property along the route of said railways for any direct damage which they, or either of them, shall sustain by reason of any direct injury caused thereto by the construction of said railway."

The bill now before me declares that the company "shall be subject to the same rules and obligations as to injury to private property not inconsistent with this act, as are now provided by law in respect to the construction of its underground railway."

The act of 1873 also provides that the company shall give a bond in a sum not less than two hundred and fifty thousand nor more than five hundred thousand dollars, which

shall be conditioned to pay, among other things, all direct damages or injury that the property of said city or persons or corporations shall sustain by reason of the construction of said road.

Here we have at most the responsibility of the company, and the liability upon the bond above referred to, as the means of compensating for all direct damages or injury — whatever that may mean.

By the law of 1873, the company could not begin work until the whole of its capital stock, amounting to ten million dollars, had been subscribed and ten per cent. thereof paid in in cash, or other financial arrangements had been made by said company to insure the completion of the work ; and by the manufacturing law of 1848, under which the corporation was formed, the stockholders and directors were liable for the debts and liabilities of the corporation in certain cases.

But, under the bill now before me, the liability of each stockholder to creditors is declared to be only for such amount as remains unpaid upon the shares of stock held by him ; and, as touching the ability of the corporation to refund in damages, it may well be stated that under this bill, before commencing work, it is not necessary that any stock should be paid in, but only that the company shall show that the full amount of the capital stock, *or a sufficient amount thereof has been subscribed*, or other financial arrangements made for commencing within two years and completing within five years from July 1, 1884, the first section of its road, from the Battery, or Bowling Green, through Broadway to Forty-second street.

It does not seem to me that the provision for the payment of private damages, under this bill, is adequate ; nor

so safe as under the previous law. And yet from the nature of the construction contemplated under that law, much less damage to private parties would ensue, and the apparent responsibility of the corporation does not appear to be improved by a reference to the twelfth section of the bill, which permits the directors to borrow any sum of money they may deem necessary, and to issue the bonds of the company for the sum so borrowed, and mortgage its corporate property rights and franchises to secure the payment of the same.

But if private parties who sustain damage by the construction of the road are inadequately protected, it appears to me that the municipality is also but little regarded.

This work is to be done in its busiest and most important street without any direction or supervision on its part. The commissioners who are to have some supervision, without the control they should have of the work, are to be appointed by the Governor and paid by the constructing company. They are in no way responsible to any departments of the city. The municipality must stand by and see its main thoroughfare excavated and carried away, and another construction substituted for it against its protest.

The same clause of the Constitution which requires the consent of the owners fronting on a street before it can be appropriated to the uses of a street railroad, requires the consent of the local authorities in charge of the street.

But in this bill the principle which underlies that provision is entirely ignored.

The inexpediency and wrong of such a spoliation of the streets, without the consent of the local authorities, is aggravated in this bill by provisions which put the sub-surface sidewalks, after their construction, in charge of the city ; as I

apprehend, make it responsible for their maintenance and care. This is also the case respecting the sewers, water pipes and other property underground of a like nature, which the company is authorized to change and reconstruct.

I cannot think that the provisions of this bill could be carried out without a violation of principle, which should not be permitted.

A large number of the owners of property on Broadway, who would be most seriously affected by this construction, as well as the mayor of the city, protest against the bill.

A law has lately been passed, which promises to afford to the citizens of New York better means of travel and transit than they now enjoy.

The scheme proposed by this bill is to a great degree an experiment; and if it is to be tried at this time in the city of New York, it seems to me Broadway should not be selected for its operation.

The bill does not present such safe assurance as it should, that the company will complete the road. A commencement and failure to finish the work would be a great calamity.

And I think many grave doubts exist as to the constitutionality of the bill in more than one of its features.

I am satisfied that the people of the city of New York will not suffer if they wait for the rapid transit which it is represented this bill will secure, until a measure can be prepared and passed which will better protect public and private rights, and inspire more confidence in the success of the undertaking.

GROVER CLEVELAND.

VETO, ASSEMBLY BILL No. 598, TO AUTHORIZE  
THE SUPERVISORS OF ORLEANS COUNTY TO  
AUDIT CERTAIN CLAIMS.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 14, 1884.

*To the Assembly:*

I return, without approval, Assembly bill No. 598, entitled "An act to authorize the board of supervisors of Orleans county to audit claims for material used in constructing the county poor-house in said county."

If the parties referred to in this bill have claims against the county of Orleans, the board of supervisors not only have the power, but it is their duty to audit and adjust such claims, which duty may be enforced by the courts.

If the claimants have no valid demand against the county, the payment of any public money to them would amount to a simple gratuity, which is prohibited by section eleven of article eight of the Constitution, in these words :

"No county, city, town or village shall hereafter give any money or property, or loan its money or credit to, or in aid of, any individual, association or corporation."

I am informed that the persons for whose benefit the bill under consideration was prepared, furnished materials to the builder of the poor-house employed by the county, and that he has been paid the amount of his contract, though he has neglected to pay for such material. This presents, perhaps, a case of hardship, but if the county has paid the proper party for the work done, according to its contract, there is no reason why it should settle claims against its contractor, for which it is in no way liable.

Those who hold the people's money in trust should be just—not generous.

GROVER CLEVELAND.

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VETO, ASSEMBLY BILL No. 275, TO INCREASE THE JURISDICTION OF DISTRICT COURTS IN THE CITY OF NEW YORK.

STATE OF NEW YORK.

*EXECUTIVE CHAMBER,*

ALBANY, *May 14, 1884.*

*To the Assembly:*

I return, without approval, Assembly bill No. 275, entitled "An act to amend chapter four hundred and ten of the Laws of eighteen hundred and eighty-two, entitled 'An act to consolidate into one act and to declare the special and local laws affecting public interests in the city of New York, passed July first, eighteen hundred and eighty-two.'"

This bill relates to the district courts in the city of New York, and one of its purposes is to increase the jurisdiction of such courts from suits involving two hundred and fifty dollars to such controversies as shall involve five hundred dollars.

This, I think, is unwise. With the other local courts in the city of New York not over-burdened with business, there seems to be no necessity of such increase in the jurisdiction of these courts. They were evidently intended for the adjudication of small claims at moderate expense to suitors. Especially does this change seem undesirable and inexpedient in the light of the fact that by the present law where suits brought in the district courts involve one hundred

dollars or more, in such cases the defendant by giving a bond may remove such suit to a higher court for trial.

Another object sought to be gained by this bill is to make the costs in said courts the same in all cases, whereas by the present law costs in an action involving not more than fifty dollars are less than they are in suits for a larger amount.

I think the distinction in this respect now existing is a proper one, and should be maintained.

Another feature of this bill, and one which seems to me very objectionable, permits the justices of these courts, in their discretion, when the amount claimed exceeds two hundred and fifty dollars, to make an additional allowance of costs to the party prevailing in the action of not more than ten per cent. upon the amount claimed in excess of the said sum of two hundred and fifty dollars.

I am thoroughly convinced that the power of courts to grant extra allowances, with its liability to abuse, should not be enlarged, and that it especially should not be extended to tribunals established largely for the determination of disputes between people of moderate means.

GROVER CLEVELAND.

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VETO, ASSEMBLY BILL No. 632, TO AMEND THE  
CHARTER OF CARTHAGE.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 14, 1884. }

*To the Assembly:*

I return herewith, without approval, Assembly bill No. 632, entitled "An act to amend an act entitled 'An act to

amend the charter of the village of Carthage, Jefferson county.'"

This bill amends the charter of the village of Carthage by providing that "the board of trustees may, and they are hereby authorized to, grant any and all licenses for the sale of spirituous and malt liquors within the corporate limits of said village, with the same powers and subject to all existing laws applicable to excise commissioners of towns under the general act."

This village is within the town of Wilna, which town is, of course, subject to the general law of the State, which permits its inhabitants to select its excise commissioners, and by such selection to determine the extent to which liquor shall be sold within its limits. Such commissioners were chosen at the last town meeting by all its electors, including those within the village of Carthage.

The proposition contained in the bill is to take from these commissioners, so far as the village of Carthage is concerned, the duties which they were specially elected to perform, and devolve them upon the trustees of the village, who were chosen without any reference to their having such matters in charge. In this way the electors of the village are not permitted, for the time being, to exercise their right of local option—as they are entitled to do by the general law.

The amendment, if it becomes a law, would allow the electors of the village of Carthage to vote for excise commissioners for the town of Wilna as before; but when elected such commissioners could not act within the village. If the people of the town, exclusive of the village, are the only persons affected by the selection of these officers, they alone should elect them.

A sufficient objection to this bill is found in the fact that

it is an attempt to relieve a particular locality from the operation of a general law of the State, and belongs to a class of special legislation particularly objectionable.

GROVER CLEVELAND.

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VETO, ASSEMBLY BILL No. 281, DEFINING DISTURBANCES OF A RELIGIOUS MEETING.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 14, 1884.

*To the Assembly:*

I return, without approval, Assembly bill No. 281, entitled "An act to amend chapter 676 of the Laws of 1881, entitled 'An act to establish a Penal Code.'"

This bill amends that section of the Penal Code which declares what acts shall constitute disturbance of a religious meeting.

The present law specifies certain acts to be such a disturbance, if done within two miles of a place where such religious meeting is held.

This bill proposes to add another and distinct disturbance, in these words :

"Exposing for sale, except in a village or city, within the like distance (two miles of a place where a religious meeting is held) any commodity or property in any other place, inn, store or grocery, than that in which the person so doing shall have usually resided or carried on business, unless with the consent of those who have charge of and conduct of such meetings."

By another section of the Penal Code, the disturbance of a religious meeting is declared to be a misdemeanor;

and a misdemeanor may be punished by an imprisonment of one year and a fine of two hundred and fifty dollars.

I am at a loss to discover how the act specified in the amendment proposed can by any possibility disturb a religious meeting. It will be observed that it applies to any locality within two miles of the meeting, except in a city or village; that it is not confined to the sale of liquor, or any other thing that might indirectly produce such disturbance, but includes any "commodity or property," and that it embraces all days of the week and all religious meetings, from the quiet assemblage for prayer and praise to the largely attended camp meeting.

The creation of new offenses' by declaring acts, innocent in themselves, to be crimes, is serious legislation, and should be supported by abundant justification. It is certainly a startling proposition that a citizen of the State cannot expose for sale any commodity or property which is lawfully the subject of sale at any place where he may lawfully be, simply and solely because a religious meeting is held within two miles of him, unless he has the "consent of those who have charge of and conduct such meeting."

It has been suggested to me that the purpose of this bill is to provide a revenue to the promoters of religious meetings by means of license fees to be charged by them for the privilege of selling commodities and property within the prescribed distance of their meeting. I cannot believe this; for if this were so, the title of the bill should be changed so that it would express its real purpose; and its provisions should have no place among the acts that are denounced as disturbances of religious meetings and made criminal.

If any citizen of the State desires to erect a booth or arrange a stall on his own property, or in any other place where he is not a trespasser, for the purpose of vending to the tired and hungry attendants upon a camp meeting or other religious assemblage, such safe and proper refreshments as he may lawfully sell, he should be permitted to do so—provided always that he does this in a place and manner to avoid actual disturbance of any religious assemblage. To forbid him this privilege is unjust and an indefensible infringement of his rights. And to make this privilege dependent upon a license granted by "those who have charge of and conduct" a religious meeting held two miles away, is a delegation of power which, if exercised at all, should be exercised by the State or some other civil authority.

GROVER CLEVELAND.

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VETO, SENATE BILL No. 54, RELATING TO THE POLICE FORCE OF TROY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 14, 1884. }

*To the Senate:*

I return, without approval, Senate bill No. 54, entitled "An act to amend chapter three hundred and sixty-two of the Laws of eighteen hundred and eighty-one, entitled 'An act supplemental to chapter three hundred and twenty-eight of the Laws of eighteen hundred and eighty, entitled "An act to establish and maintain a police force in the city of Troy,'" and chapter seventy-six of the Laws of eighteen hundred and eighty-one, entitled "An act to amend chapter three hundred and twenty-eight of the Laws of eighteen hundred and

eighty, entitled 'An act to establish and maintain a police force in the city of Troy.' "

The amendment to the police law of the city of Troy contained in this bill permits the board of police commissioners, within twenty days after the passage of the act, to appoint from the present detective force a chief detective, "who shall be subject to the order and control of the superintendent of police, and have charge of and direct and control the detective work of the said city." His annual salary is fixed at fifteen hundred dollars.

Another provision of the same section in which this amendment occurs, authorizes the appointment of a superintendent of police, and declares that "such superintendent shall have, among other powers and duties, the charge of organizing and directing the detectives of said force." This is as it should be; and all the representations of those in favor of the amendment have failed to convince me that its enactment would be wise or beneficial, especially while the power vested in the superintendent remains as above stated.

I think a concentration of responsibility and authority in one person is peculiarly desirable in police detective operations. The tendency to a conflict of authority in the case of two officers having the power with which these would be severally invested, if the proposed amendments should be passed, is quite apparent.

The law authorizes the appointment of but four detectives. If one should be made chief detective under this bill there would be but three left in the ranks, with two commanding officers.

It cannot be that this amendment is at all calculated to increase the usefulness and efficiency of the detective force.

GROVER CLEVELAND.

VETO, SENATE BILL, NOT PRINTED, RELATING  
TO THE VILLAGE OF MIDDLETOWN.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 14, 1884. }

*To the Senate:*

I return, without approval, Senate bill, not printed, entitled "An act to authorize the village of Middletown, in the county of Orange, to raise money to construct a village hall."

This bill authorizes the board of trustees of the village of Middletown to construct a village hall for the use of the different departments of the village government, and to issue the bonds of the corporation in a sum not exceeding the sum of twenty-five thousand dollars to meet the expense of the same.

By chapter four hundred and eighty-two of the Laws of 1875, the board of supervisors of Orange county have the power to grant to the village of Middletown all the powers which this bill seeks to confer; and the passage of a special statute for that purpose is unnecessary, as well as opposed to sound methods of legislation. The act referred to was framed for the express purpose of remitting such matters to the local authorities; and the boards of supervisors were vested with the requisite authority to deal with them pursuant to a policy which recognized the evils of bringing such purely local measures before the Legislature. Every day's experience confirms my conviction that this policy should be adhered to strictly and consistently, and that general laws to meet the needs of localities should be passed, or amended when found deficient.

GROVER CLEVELAND.

## VETO, SENATE BILL No. 32, TO PROVIDE COMPENSATION FOR THE LATE CAPTAIN OF THE PORT AND HARBOR-MASTERS OF NEW YORK.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *May 16, 1884.**To the Senate:*

I return, without approval, Senate bill No. 32, entitled "An act to provide compensation for the performance of the duties of captain of the port of New York and harbor-masters of the port of New York, since May twenty-fourth, eighteen hundred and eighty-three."

This bill directs the payment from the State treasury of the sum of thirty-three thousand dollars, or so much as may be necessary to compensate Chester S. Cole and other parties therein named, who, it is declared, have acted as captain of the port of New York or harbor-masters since May 24, 1883.

By chapter 487 of the Laws of 1862, the statutes in relation to the captain of the port and harbor-masters were revised, and a complete system for the government and regulation of these officers was adopted.

The first declaration of that law is as follows:

"The Governor shall appoint, by and with the consent of the Senate, an officer to be called captain of the port of New York, and to assist him, subordinate to his directions, eleven harbor-masters."

And it ends with this distinct provision:

"All acts heretofore existing relating to the captain of the port or to harbor-masters of the port of New York are hereby repealed."

The persons for whose benefit the bill before me has been

prepared, were all appointed since the passage of the law above referred to and pursuant to its provisions. Six of them were so appointed in May, 1882, and the remainder at various dates prior to that time, one of them having been made a harbor-master in the year 1873.

The fees which, by the Laws of 1862, these officers were declared entitled to charge and receive for their services were, in 1876, adjudged by the Supreme Court of the United States illegal. Notwithstanding this decision, the harbor-masters continued to receive such fees under the guise of voluntary payments, until the year 1883.

On the fourth day of May in that year, the Legislature passed a law entitled "An act to provide for the appointment of a captain of the port of New York and harbor-masters of the port of New York, and defining and regulating the powers and duties and compensation of said officers, and repealing chapter four hundred and eighty-seven of the Laws of eighteen hundred and sixty-two."

This statute provides for the appointment of a captain of the port and eleven harbor-masters by the Governor, by and with the consent of the Senate, who, instead of the illegal fees which they had theretofore collected, should be paid annual salaries by the State.

This law contains all the provisions necessary to create an entirely new system, and its last section repealed the statute of 1862 above recited, and abolished the offices thereby created in the following terms :

"Chapter four hundred and eighty-seven of the Laws of eighteen hundred and sixty-two, entitled 'An act defining and regulating the powers, duties and compensation of the captain of the port and harbor-masters of the port of New York,' is hereby repealed, and the offices thereby created are abolished,

and all acts or parts of acts which are inconsistent with this act are hereby repealed."

Thirty-three thousand dollars were appropriated by the terms of the law to pay the salaries of the captain of the port and harbor-masters as therein fixed.

As required by this statute, nominations to fill the offices thereby created, were on the 4th day of May, 1883, sent to the Senate, but the same were not confirmed by that body.

It is claimed that notwithstanding the distinct legislation above recited, and the repeal of the law of 1862, that the persons appointed under the law thus repealed have continued to perform the duties attached to these offices; and the bill before me directs the payment to them of the money appropriated to pay the salaries provided for by the act of 1883.

It was my belief before that law was passed, that all the duties required of the captain of the port and harbor-masters could be properly and efficiently performed under the supervision of the department of docks in the city of New York, and I am still of that opinion. But when the act of 1883 was presented to me, I had but the choice of allowing the old officers to remain with no way of collecting compensation, except by the exaction of illegal fees, or approve a bill providing for the abolition of the offices as then existing and the appointment of incumbents to be paid by the State.

The latter course was adopted, and the law took effect, though by the refusal of the Senate to confirm, the new offices were not filled.

In this condition of affairs, the dock department, by virtue of the power vested in it by statutes then existing, under-

took the performance of the duties which had theretofore been performed by the captain of the port and harbor-masters.

At a meeting of the dock commissioners, held on the 9th day of May, 1883, five days after the nominees for harbor-masters failed of confirmation, preliminary steps were taken to assume the proposed new duties. On the eleventh day of May, another meeting was held, which, upon the invitation of the dock department, was attended by representatives of the Produce Exchange, the Maritime Exchange, the Chamber of Commerce, the Board of Trade and Transportation and two other exchanges. At this meeting the subject seems to have been further considered, and on the eleventh day of July the water front of the city was divided by the said dock commissioners into nine districts, and a dock-master assigned to each district, at a salary of one thousand five hundred dollars per annum.

This action was taken by the department, as declared in their resolutions passed creating such districts and appointing such dock-masters, for the purpose, among other things, of "rendering necessary facilities for the prompt berthing of vessels" at the wharves; and it was declared that the dock-masters should "perform such duties and render such services in relation to the supervision, regulation and occupation of the wharf property and water fronts in their respective districts as the laws of the United States and of the State of New York, the ordinances of the city of New York and the by-laws of this board and its rules or orders shall or may require, prescribe or direct."

All this appears from the proceedings of the dock department, duly certified and now in my possession.

It has been represented to me, from time to time, since the first movement was made by the dock department in this

direction, that the duties theretofore performed by the harbor-masters were being performed by these dock-masters, to the entire satisfaction of all interests affected.

In response to several specific questions addressed to the dock department, I received in the month of November, 1883, a communication signed by the president of that department, detailing the services performed by the dock-masters in the matter of berthing vessels, and emphatically expressing the opinion that such duties could be satisfactorily performed under the direction of said department, without expense to the State or taxing the commerce of the port.

I was furnished in the month of January, 1884, with copies of the reports of the several dock-masters to the commissioners. If these are to be relied on, they establish the fact that nearly all the berthing of vessels since July, 1883, has been done by such dock-masters.

I herewith transmit to the Senate copies of these documents.

An examination of the testimony taken by the committee of the Senate which investigated these matters, develops the fact that both the former harbor-masters and the dock-masters claimed to have performed the duties appertaining to the office of harbor-masters.

In point of fact, all who are acquainted with the condition of things in the port of New York, are aware that there is but little for anybody to do in the way of berthing vessels.

There is an important difference between these two classes of persons, who claim to have performed their duties.

The dock-masters were directed to perform them, and the harbor-masters knew they had no right after the 24th day of May, 1883, to interfere with them.

That the law of 1862 repealed all former laws on the subject of the appointment and compensation of harbor-masters

is entirely certain, if the English language means anything. And if these harbor-masters did not hold office under that law they were not officers.

And it is just as certain that the law of 1883 repealed the law of 1862, and abolished the offices thereby created.

This is the only meaning that can be given to the language of these statutes.

And if there had been no express words to that effect in these laws, the result would have been the same; for it is a well settled rule in the construction of statutes laid down by the highest court in the State, that "when a later statute not purporting to amend a former one covers the same subject, and was plainly intended to furnish the only law upon the subject, the former statute must be held repealed by necessary implication." This language is quoted from the opinion of the Court of Appeals in the case of Heckmann against Pinckney, reported in volume 81 of the New York Reports, at page 211.

These harbor-masters were not taken by surprise by the passage of the act of 1883, as every member of the last Legislature is well aware. They knew its effect and the intention of the Legislature in its enactment. And it may be safely asserted, I think, that they were not mere idle spectators of the passage of the law or the proceedings that led to the failure of the attempt to fill the offices thereby created.

In June, 1883, a month after the passage of the law of that year, the captain of the port, in a suit brought by him in behalf of the harbor-masters for a penalty, applied to the court for leave to discontinue the action *upon the ground* that by that very law the offices held by him and his associates had been abolished; *and for that reason and no other* the court granted

the application and decided in the plainest terms that these officers were appointed under the law of 1862, and that on "May 4, 1883, the act under which the plaintiff and his associates derived their authority was repealed, and the offices created by the said act were abolished."

The decision of the court on this application and the opinion giving the reasons therefor are reported in Howard's Practice Reports, volume 65, at page 520.

It is only when they seek to obtain the money which was appropriated for those whom it was intended should succeed them, that they take the opposite ground and put forth the attenuated pretext that they remained in office and performed services in the employ of the State.

If it be true that their terms ended when the law of 1883 took effect, and that the dock-masters were duly designated to perform their duties, it follows that the harbor-masters, after that date, were not employes of the State; and in performing or attempting to perform such duties, they were not even volunteers, but usurpers.

No one claims that these persons were acting under the law of 1883. On the contrary, they insist that they were acting under some previous statute, which the law of 1883 did not repeal. There was no salary attached to the office prior to the last named act, and no fixed measure of compensation, and it is quite clear that the only persons entitled to the salary provided in that statute are those holding office under it.

But the bill under consideration provides that the parties named shall be paid for the period between the 24th day of May, 1883, when the law of that year took effect, and the day that this bill shall become a law, at the rate of the annual salaries provided by the law of 1883.

This determination by the Legislature of the amount due these persons for their services is beyond all question a violation of section nineteen of article three of the Constitution, which is in the following words:

"The Legislature shall neither audit nor allow any private claim or account against the State, but may appropriate money to pay such claims as shall have been audited and allowed according to law."

And on the theory that these persons are in office under a law passed prior to that of 1883, and to which no salary was attached, I am of the opinion that this bill is obnoxious to the provision of the Constitution which prohibits the passage of any private or local bill "*creating, increasing or decreasing fees, per centage or allowances of public officers during the term for, which said officers are elected or appointed,*" as well as another provision that declares the Legislature shall not "*grant any extra compensation to any public officer, servant, agent or contractor.*"

No pretense is made that the persons named in this bill performed services for the State blindly, or in the expectation of compensation under the law of 1883 which abolished their offices. A representative of theirs was early informed by at least one of the officers of the State, that such a thing could not be anticipated; and the Attorney-General was at hand to advise them of their legal rights.

It may further be here suggested, that if a claim exists against the State in favor of these parties, upon any thing or within any rule of law or right, a tribunal has been established for its ascertainment and adjudication, the door of which is open to any citizen.

The people have an interest in the determination of the question whether their representatives in the Legislature

have the power to dispense with the services of its appointed servants when no longer needed; and whether the sum of nearly or quite thirty-three thousand dollars shall be paid by the taxpayers of the State, upon claims if not fictitious, greatly exaggerated, and in behalf of parties who, in defiance of express legislation, and against the protest of the State, have chosen to regard themselves still in the public service.

GROVER CLEVELAND.

I.

CITY OF NEW YORK.

DEPARTMENT OF DOCKS,

NEW YORK, Nov. 20, 1883. }

Hon. DANIEL S. LAMONT, *Private Secretary, etc.:*

DEAR SIR.—In answer to yours of the tenth instant making inquiry, by direction of His Excellency the Governor, for information upon certain submitted points, and which are herein referred to, I have the honor to reply as follows, viz.:

To the first inquiry—"What action, if any, has been taken, and on what dates, by the department of docks of the city of New York, concerning the berthing of vessels and other services formerly performed by the harbor-masters of the port of New York?" The accompanying printed and written extracts of the proceedings of the board governing the department of docks, will furnish, I trust, a satisfactory answer to that inquiry.

To the second inquiry, viz.: "Was public notice given by the dock department of its assumption of this service, etc., etc.?" I desire to state that public notice was given by the dock department of its readiness to perform the service of berthing vessels, etc., through publication in the City Record of the proceedings of the board, and by the reference made thereto by several of the daily newspapers at the time of the adoption of the resolutions of the board relating to such action. No special notification was conveyed to the late harbor-masters, although I am fully convinced, from the

admissions of some of the late harbor-masters, and from the action of others of them, that each (and every) one of the late officials in question was thoroughly cognizant of the action of the department of docks in regard to its willingness and readiness to provide suitable berths for vessels, etc., etc.

To the third inquiry, viz.: "What services, if any, have been performed since May 4, 1883, by the persons who previous to that day held the position of harbor-master?" I would reply by stating that some services have been performed since May fourth last in some portions of the water front of this city by some of the persons who previous to that day held the position of harbor-master who seemed disposed to take advantage of the authority heretofore exercised by them, and which had been, under the formerly existing circumstances, generally recognized, but as the fact became known that this department was fully prepared to furnish needed wharf facilities to vessels requiring the same, *and without any fee or reward*, application to the late harbor-masters for berths has been less frequent, and this department is now engaged in the discharge of that duty.

To the fourth inquiry, viz.: "How have these services been paid?" I can give no satisfactory answer; the common rumor, however, is that they have been, as it was generally understood they were heretofore, by so-called voluntary contributions, from such as chose to avail themselves of their unnecessary services.

To the fifth inquiry, viz.: "What portion of the service has been performed by the dock-masters appointed by your (this) board?" I would answer, that from the most reliable sources of information that I have, I am fully convinced that a large share of the service for the past two months has been performed by the dock-masters of this department; indeed, on a very large portion of the water front of this city the entire service has been, and is being, performed by this department.

To the sixth inquiry, viz.: "How have these services been paid?" I reply that the services of the dock-masters were paid for out of the city treasury (in the same manner as all other expenses of the department are) and with but little, if

any increased cost to the department therefor, as the service was performed by the dock-masters in connection with the discharge of the duties heretofore required of them on the water front, which you will notice by a reference to the accompanying rules and regulations.

To the seventh inquiry, viz.: "Does the experience of the dock-masters prove that the harbor-master service can be satisfactorily performed under the direction of your board without expense to the State or to the commerce of the port?" I answer, unhesitatingly, that it does.

To the eighth inquiry, viz.: "What reasons have you to believe that the service performed by your dock-masters is regarded by the ship owners and persons interested, as efficient as that of the late board of harbor-masters?" I would answer that inasmuch as this department has now been engaged since July last in attending to the duty of providing berths at the wharves of this city for vessels requiring them, and has received no complaint, either public or private, in regard thereto, it is fair to assume that the same has been performed to the satisfaction of the parties interested therein, in addition to which the members of the board have received, at various times, the personal approval of the service from many of the masters, owners and consignees of vessels of this port.

With reference to the suggestion that you would be pleased to receive any additional information concerning the service that I might be pleased to make, I would state that the questions submitted seem to embrace everything of importance pertaining to the subject, and, as I trust, they have been satisfactorily answered, I respectfully submit that I have nothing to add, unless it be that in my opinion there is no use whatever for any additional officials to act as harbor-masters; that it would, and did, embarrass this department by the conferring of very similar authority on two sets of officials, and by the imposition of an unnecessary and additional expense upon the commerce of this port.

Respectfully your obedient servant,

L. J. N. STARK,

*President.*

(Copy.)

DISTRICT No. 1.

NEW YORK, January 17, 1884.

L. J. N. STARK, *President, Commissioner of Docks:*

SIR.—In accordance with the request that I make a statement of facts in relation to the duties performed by me as dock-master, I respectfully submit the following:

Since the sixteenth of July, when I assumed the office, I have often been called upon to perform the duties pertaining to the office of harbor-master and have done them.

One of the so-called harbor-masters, who was assigned to a district which forms a part of the district of which I have charge, I have not seen but once or twice since my incumbency.

Owing to the fact that the office of the captain of the port being located in my district, and that four so-called harbor-masters are assigned to that portion of the river front which my district covers, has tended to lessen the applications to me.

There is no difficulty in my performing all the duties pertaining to the office of dock-master and harbor-master in my district.

Respectfully,

CHAS. H. THOMPSON,  
*Dock-Master.*

(Copy.)

DISTRICT No. 2.

NEW YORK, January 19, 1884.

Hon. L. J. N. STARK, *President Department of Docks:*

DEAR SIR.—In reply to your request for a statement as to the performance of my duty in berthing vessels, I respectfully report as follows:

That since my appointment as dock-master, in July last, I have provided berths for the principal portion of the vessels requiring the same in my district, which extends from the Battery to Canal street, North river, and I am still performing such duty in obedience to the instructions received from the department of docks.

In two instances I have been informed that applications for berths were made to the late harbor-master, who in such instances assumed the right of assigning a vacant berth. But, as a rule, the applications are made to me, and in response I designate and provide suitable berths, in conformity with your instructions.

It is very rare that I meet any of the late acting harbor-masters within the confines of my district, and, as far as I know, the work of berthing vessels by the dock-masters is quite acceptable to those requiring the same to be done, and can be readily done by the department of docks.

Very respectfully yours,

GEO. W. WANMAKER,  
*Dock-Master District No. 2, N. R.*

(Copy.)

DISTRICT No. 3.

NEW YORK, January 21, 1884.

*To the President of the Board of Dock Commissioners :*

DEAR SIR.—Since I was appointed dock-master by your honorable board on the 16th of July, 1883, and assigned to what is known as District No. 3, East river, I have not, from my own personal knowledge, known of any vessel having been assigned to a berth by any harbor-master in my district, but in every case where I have been applied to I have provided berths for such vessels, and I have not been interfered with in performing such duties.

EDWARD ABEEL,  
*Dock-Master District No. 3, E. R.*

(Copy.)

DISTRICT No. 4.

NEW YORK, January 18, 1884.

Hon. L. J. N. STARK, *President Department of Docks :*

SIR.—In reply to your request for a statement as to the performance of my duty in berthing vessels, I most respect-

fully report that since my appointment as dock-master in July last, I have berthed a large number of vessels in my district, which extends from Canal to Twenty-third street, N. R., and am still performing such duty in obedience to instructions from this department.

Until recently, the harbor-master very seldom was seen on the lower part of my district.

In exceptional cases, applications for berths have been made to the harbor-master, who, in such instances, assumed the right of assigning berths, but a large majority of the applications are made to me ; in response, I designated suitable berths, in conformity with your instructions.

Respectfully submitted,

J. M. SMITH,  
*Dock-Master District No. 4, N. R.*

(Copy.)

DISTRICT No. 5.

NEW YORK, January 22, 1884.

Hon. L. J. N. STARK, *President Board of Dock Commissioners* :

SIR.—I have the honor to report that since my appointment as dock-master in July last, I have, in the discharge of my duties, berthed all vessels in the order of their application, within the limits of my district, which extends from Grand to Thirty-fourth street, E. R.

During that period I have gone over the district daily, and have never seen the late acting harbor-master, nor have I any knowledge that he has attended to any of the duties pertaining to the berthing of vessels in my district.

Very respectfully,

BERNARD KENNEY,  
*Dock-Master Fifth District, E. R.*

(Copy.)

DISTRICT NO. 6.

NEW YORK, January 16, 1884.

Hon. L. J. N. STARK, *President Department of Docks, city of New York:*

SIR.—I have the honor respectfully to report that for the past six (6) months, in compliance with instructions received from the commissioners of docks, I have supervised the arranging and proper berthing of all vessels and water craft of every description, which arrived at the several piers, bulk-heads and slips lying in that portion of the city situate north of West Twenty-third street and south of West Fifty-ninth street, on the North or Hudson river, and designated by the department of docks as district No. 6; that the number of vessels, etc., thus supervised and accommodated and lying at the several piers in this district has averaged eighty, or a total of fourteen thousand six hundred (14,600) for the past six (6) months; that the system devised by the dock department for the proper discharge of this important duty works well and gives general satisfaction, and in no single instance out of the number above named, nor for the term embraced in the last six (6) months, has any other official but the dock-master appointed by the department of docks discharged or attempted to discharge the duty of assigning vessels to berths at the several piers, etc., embraced within the limits of the sixth district.

Very respectfully,

Your obedient servant,

EDWARD GILON,  
*Dock-Master Sixth District, N. R.*

(Copy.)

DISTRICT NO. 7.

NEW YORK, January 21, 1884.

To the Hon. L. J. N. STARK:

DEAR SIR.—I have performed the duty your honorable body has assigned to me in District No. 7, East river, including all

the water front from south side of Ninety-second street to the north side of Thirty-fourth street, East river, for the past six months; in that time I have berthed all the vessels that have come in the within district, and no other person has been attending to that duty. I have not seen the gentleman that claims to be harbor-master in that district, and have not heard of him as berthing one boat, not even a canaler.

Yours respectfully,

ROBERT HALL.

P. S.—I have berthed all told, from July 16, 1883, to date, 576 boats of all kinds.

Sworn before me this 21st day of January, 1884.

ROBERT J. KYLE.

*Notary Public, N. Y. (99).*

(Copy.)

DISTRICT No. 8.

NEW YORK, January 17, 1884.

*To the Board of Dock Commissioners:*

GENTLEMEN.—During my term of service as dock-master for the Eighth district, North river, I have provided berths for all vessels whose captains, consignees or owners have made application therefor, and at no time has this duty been performed by any so-called harbor-masters.

Respectfully,

THEO. S. CROFT,

*Dock-Master.*

(Copy.)

DISTRICT No. 9.

NEW YORK, January 14, 1884.

President L. J. N. STARK:

DEAR SIR.—From the 16th of July to date, I have berthed 465 vessels, and have turned in wharfage for same to the amount of about \$1,100.

The captains of the vessels express themselves as being better satisfied with the new arrangement under the dock-masters than they were before, as now they have but one man to deal with. I go over my district twice a day and have never seen a harbor-master in the district.

Yours respectfully,

JOHN CALLAN,  
*Dock-Master, Ninth District, East River.*

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THE BOUNDARY LINE BETWEEN NEW YORK  
AND NEW JERSEY.

LETTER FROM GOVERNOR CLEVELAND TO GOVERNOR ABBETT.

STATE OF NEW YORK.

*EXECUTIVE CHAMBER,* }  
ALBANY, *May 28, 1884.* }

To his Excellency LEON ABBETT, *Governor of New Jersey:*

SIR.—I have the honor to transmit to you herewith a certified copy of the law enacted by the Legislature of the State of New York, ratifying and confirming the agreement entered into by commissioners on the part of the States of New York and New Jersey, in relation to that portion of the boundary line between the two States extending from the Hudson river on the east to the Delaware river on the west.

As it is stipulated in the agreement that it is to become binding on the two States when confirmed by the Legislatures thereof, respectively, and when confirmed by the Congress of the United States, I have the honor to request that you will advise me as to the action of the Legislature of New Jersey, and that you will join me in a communication to the

Congress of the United States, asking for its confirmation of the agreement of the two States.

I have the honor to remain,  
Your obedient servant,

## GROVER CLEVELAND,

*Governor of New York.*

JOINT LETTER TO CONGRESS.

*To the Congress of the United States.*

In accordance with the concurrent action of the Legislatures of the States of New York and New Jersey, the undersigned respectfully communicate and make known to Congress that the agreement in relation to the boundary lines between the State of New York and the State of New Jersey, entered into by commissioners on the part of the said two States, has been formally ratified and confirmed, as specifically set forth by the acts of the Legislatures of the respective States, true copies of which are hereto annexed.

And pursuant to said acts, in like terms adopted, it is hereby respectfully requested by us jointly, on the part of our respective states, that the action taken and done on the subject of the boundaries thus established, be approved by Congress.

*Privy seal of }  
New York. }*

GROVER CLEVELAND,  
*Governor of the State of New York.*

Great seal of  
New Jersey.

LEON ABBETT,  
*Governor of the State of New Jersey.*

Dated *June*, 1884.

## LETTER TO SPEAKER CARLISLE.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, June 6, 1884. }

To the Honorable JOHN G. CARLISLE, *Speaker of the House of Representatives, Washington, D. C.:*

SIR.—I have the honor to transmit, herewith inclosed, certified copies of acts of like purport passed by the Legislatures of the States of New York and New Jersey, respectively, relating to the boundary line between the States named, together with a joint letter from Governors Cleveland and Abbott asking congressional approval of the agreement in this matter made by and between these States.

The draft of a bill ratifying the agreement referred to is also forwarded, which, should it meet your approval, you are very respectfully requested to cause to be introduced in the House of Representatives.

With the highest respect, I am, sir,

Your obedient servant,

DANIEL S. LAMONT,

*Private Secretary.*

Inclosures.—Certified copy chapter 351, Laws of New York, 1884. Certified copy chapter 83, Laws of New Jersey, 1884. Joint letter from Governor Cleveland and Governor Abbott to Congress. Draft of bill confirming the agreement.

VETO, CERTAIN AWARDS BY THE CANAL  
APPRAISERS.

STATE OF NEW YORK.

*EXECUTIVE CHAMBER,*      }  
ALBANY, June 11, 1884.      }

Statement of items of appropriation objected to, and not approved, contained in Assembly bill No. 434, entitled "An act appropriating money to pay certain awards made by the Canal Appraisers and the Board of Claims, with the interest thereon, and to pay counsel and witnesses employed and subpoenaed in behalf of the State."

The items contained in section one, which read as follows :

"Jacob F. Schoellkopf, eight hundred and fifty dollars."

"John Simson, nine hundred and twenty-five dollars."

These items are objected to, and not approved, for the reason that appeals from the awards made by the Canal Appraisers in favor of the persons in said items mentioned have been taken on behalf of the State by the Superintendent of Public Works, which appeals are still pending.

GROVER CLEVELAND.

MEMORANDUM FILED WITH ASSEMBLY BILL No. 466,  
RELATING TO THE REGISTER OF NEW YORK.  
APPROVED.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, June 14, 1884. }

*Memorandum filed with Assembly bill No. 466, entitled "An act in relation to the office of the register in the city and county of New York." Approved.*

This bill, together with Assembly bill No. 467, entitled "An act in relation to the office of surrogate of the county of New York," which is also this day approved, came to my hands originally during the session of the Legislature and prior to the twelfth day of May last.

Upon examining these two bills, I discovered certain defects and errors of so much importance, that on the day last mentioned I addressed a message to the Assembly calling attention to the imperfections in the bills, and suggesting that they should be recalled for amendment.

This course was adopted by the Assembly, and certain amendments were made after which they were again returned to me for approval.

I think they are still defective, in that while they oblige the city to pay certain salaries to the officers therein named and profess to make all fees earned by them payable to the city, they permit these officers to turn over accounts against parties for whom official services are rendered instead of fees in cash.

But inasmuch as these deficiencies are not fatal, I waive my objections based thereon and construe the fact that they were not remedied, though attention was particularly

called to them, as proof that the Legislature differed with me as to the expediency of making the change.

Among other errors, however, which were considered by all interested of sufficient importance to make necessary the recall and amendment of these bills, was one occurring in that relating to the office of register, which limited the performance of certain important duties only to the immediate successor of the present incumbent.

In the message to the Assembly above referred to, after suggesting the recall of the bills for amendment, the following language was used :

“I am led to make this suggestion for the reason that these bills belong to a class of remedial measures of great importance, and from the enactment of which valuable reforms are anticipated. It is manifest that their good effect should not be jeopardized or diminished by imperfection in their form, or by the omission of any provisions which tend to make them complete and effective.”

And the message concluded in the following words:

“I have not had an opportunity to examine the other bills in my hands, similar to those referred to, relating to the public offices in the city of New York, with such care as is necessary to determine whether they contain similar imperfections.

I recommend that bills Nos. 466 and 467, which are above referred to, be recalled for amendment. And in view of the near approach of the final adjournment of the Legislature, I suggest that the other bills of a like character be also recalled or carefully examined by some party familiar with the subjects they embrace, so that fatal defects shall not be discovered when it is too late for amendment.”

Notwithstanding this express warning there are two bills now in my hands which are connected in purpose and general design with those last referred to, which are so seriously imperfect that I have determined not to approve them.

One of these is a Senate bill entitled "An act to fix and regulate the terms of office of certain public officers in the city of New York," which contains the same vice in an exaggerated form that caused the recall and amendment of the bill relating to the register. It absolutely makes no provision for the appointment of any officer or head of department after the immediate successors to those now in office.

And the second section provides that "the mayor of the city of New York, to be elected at the general election in the year eighteen hundred and eighty-four, shall, within thirty days after the commencement of the term for which he is elected, appoint successors to each *office*, commissioner and head of department, who may be appointed during the remainder of the term for which the present mayor of the city was elected; and the persons so appointed shall hold office for the same terms respectively that those officers, commissioners and heads of departments whom they succeed, would have held office if this act had not been enacted, provided that any commissioner or head of department appointed under the provisions of this act, shall not hold office for any longer term or period than the term of office of the mayor by whom such commissioners or heads of departments shall be appointed, and thirty days thereafter."

Section third repeals all acts and parts of acts inconsistent with the provisions of this act.

It will be seen at a glance that this bill does not purport to "fix and regulate" the terms of all appointive offices, but only such as shall be appointed during the remainder of the term of the present mayor, *and their immediate successors*. And it will be observed that the next mayor can only appoint successors to such officers as shall be appointed by the present mayor *during the remainder of his term*. I think the

evident intention of the bill would be entirely defeated if the mayor now in office should allow the present incumbents to hold over till the expiration of his term, instead of appointing others in their places.

When the bill attempts to fix the terms of the appointees of the next mayor, it would seem to provide in the same sentence for two limitations to such terms—that is, four years from the 1st day of May, 1885, as provided by the present law, and one year and eleven months from February 1, 1885.

I observe, too, that the last limitation only applies to "commissioners and heads of departments," the word "officers" having been omitted, though it is embraced in the other limitation.

Of all the defective and shabby legislation which has been presented to me, this is the worst and most inexcusable, unless it be its companion, which is entitled "An act to provide for a more efficient government of the department of parks in the city of New York."

This bill provides that the terms of office of the present commissioners of the department of public parks, in the city of New York, and any of their successors who may be appointed by the present mayor, shall cease on the first day of February, 1885, and that in their place the mayor shall appoint, within ten days thereafter, three commissioners, one of whom shall serve for two years, one for four years and one for six years; and that "biennially thereafter the mayor shall appoint *one* commissioner of the department of public parks who shall hold his office for two, four or six years, as the term of the office becoming vacant shall require or until removed."

I confess I am utterly unable, after considerable study,

to determine when the terms of any appointees after the first would terminate, or how the department could be long continued with three members, under the provisions of this bill.

In 1887 the shortest term of these officers would expire, and a commissioner should be appointed. What length of time for the new commissioner does the office becoming vacant "require?" I think the language of the bill can be most reasonably answered by making another appointment for two years. If this were done the new appointee's term would expire in 1889. But at that time the four years' term of an original appointee would also expire, making two offices to be then filled, while the mayor, by the bill, is limited to the appointment of one commissioner in that year.

If it was intended to create a commission of three members, it is entirely evident that the term of all appointees, after the first, should have been for six years.

Appreciating the litigation and the sacrifice of rights and interests which result from defective laws, I have earnestly tried, during my official term, to enforce care in their preparation. I am importuned every day to allow laws to go upon the statute book which are mischievously imperfect, but which are deemed good enough to promote the purposes of interested parties. It is not pleasant to constantly refuse such applications, but I conceive it my duty to do so.

Though the purposes of these bills are supposed to be in the public interest, and though their failure may be a disappointment to many, I do not see that I should allow them to breed dispute and litigation touching important public offices and to be made troublesome precedents to encourage careless and vicious legislation.

GROVER CLEVELAND.

VETO, APPROPRIATION BILL, ITEM FOR PROSECUTION OF THE STATE SURVEY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, June 14, 1884.

*Statement of an item of appropriation objected to, and not approved, contained in Assembly bill No. 182, entitled "An act making appropriations for the support of Government."*

The following item in said bill is objected to and not approved:

"For the board of commissioners of the State survey for the prosecution of the State survey for fixing meridian and other lines and points as bases of county, town and other surveys, pursuant to chapter two hundred and sixteen of the laws of eighteen hundred and seventy-eight, fifteen thousand eight hundred dollars."

My opinion on the subject of the present mode of conducting the State survey has been more than once officially expressed. After an expenditure of a sum considerably in excess of one hundred thousand dollars, very little seems to have been done of practical benefit to the people.

That the correct location of certain points which shall be bases for local surveys would be beneficial, I have no doubt, and I should be glad to see such a work performed. But I am not able to appreciate the importance of the elaborate, slow and expensive survey of the State which this appropriation is intended to continue. I am still of the opinion that a sufficiently correct and exact location of boundary lines and monuments to answer every useful purpose could be conducted under the supervision of the State Engineer and Surveyor within a reasonable time and at a comparatively small expense. If, however, it must be done by a depart-

ment formed for the special purpose, it would, I am satisfied, be much better to appropriate a large sum of money and speedily complete the work.

GROVER CLEVELAND.

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VETO, SUPPLY BILL, CERTAIN ITEMS IN.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, June 14, 1884. }

*Statement of items of appropriation objected to, and not approved, contained in Assembly bill No. 428, entitled "An act making appropriations for certain expenses of government and supplying deficiencies in former appropriations."*

The several items herein enumerated contained in Assembly bill No. 428, entitled "An act making appropriations for certain expenses of government and supplying deficiencies in former appropriations" are objected to, and not approved, for the reasons hereinafter stated.

For the officers and employes of the Legislature of eighteen hundred and eighty-four, not exceeding three in number in each house, as may be designated by the presiding officers of the respective houses, to remain after the adjournment of the Legislature to perform duty under the direction of the Clerk of each house, respectively, for a period not exceeding ten days, to each one in such sum, not exceeding his legal per diem allowance, as the Clerk of each house, respectively, shall certify and apportion out of the sum hereby appropriated, the sum of three hundred and sixty dollars, or so much thereof as may be necessary.

This item is objected to, and not approved, for the reason that as a matter of right and principle this expense should be provided for in the regular appropriation for legislative expenses; and for the further very conclusive reason that compensation for the services mentioned in the item has actually been made from such appropriation.

For Samuel C. Harris, for eight days' service as assistant door-keeper of the Assembly, from the first day of January to and including the eighth day of January, eighteen hundred and eighty-four, the sum of forty dollars.

This item is objected to, and not approved, for the same reasons given for the disapproval of the preceding item.

For the purpose of encouraging improvement in the manufacture of butter and cheese, and the cultivation of hops and other crops, the sum of two thousand five hundred dollars, to be distributed in premiums by the Central New York Agricultural, Horticultural and Mechanical Association, at Utica, upon vouchers to be approved by the comptroller.

This item is objected to, and not approved, for the reason that it is a gift of money to a local association to be distributed in premiums, and because the very liberal appropriations already made for the encouragement of agriculture ought not to be increased.

For composing and printing testimony taken by and before legislative investigating committees for the year eighteen hundred and eighty-four, for the use of such committees, upon bills therefor, which shall be certified by the chairmen of such committees and the presiding officers of the respective houses, and to be audited by the comptroller, the sum of fifteen thousand dollars, or so much thereof as may be necessary.

This item is objected to, and not approved, for the reason that the sum of thirty-two thousand dollars, appropriated in an item which has been approved for the payment of the general expenses of the investigating committees mentioned in this item, should be and I believe is sufficient to cover the expenses above specified.

These investigations are in many cases necessary to the intelligent inauguration of needed reforms, but their extravagance and the expense attending them constitute an abuse which also furnishes a proper subject for reform. Much of this investigation could be done at the city of Albany with but little expense; but in actual practice New York city seems to be the favorite head-quarters for the operations of these committees, where the most expensive quarters, at

the most expensive hotels, seem to be thought necessary to a proper performance of duty, while a retinue of counsel, clerks, messengers, sergeants-at-arms and stenographers are in attendance, and frequently render the most exorbitant claims for their services. I have bills reported to me where the hotel expenses of members of investigating committees and their attachés are charged as high as nineteen dollars per day.

If only the legitimate claims connected with this work are allowed and properly audited, I am satisfied that the appropriation contained in this item can be saved to the taxpayers of the State and all reasonable expenses be fairly paid.

For the Binghamton Asylum for the Chronic Insane \* \* \* for building smoke houses, two hundred and fifty dollars ; for building addition to meat room and moving ice-house, three hundred and fifty dollars ; for building vegetable cellar, one thousand dollars ; \* \* \* for repairing ward windows, two hundred and fifty dollars ; \* \* \* for five tons of fertilizer for farm and garden use, one hundred and sixty dollars ; for two lumber wagons, one hundred and sixty dollars ; for two sets double harness, one hundred dollars ; for farm and garden utensils, three hundred dollars ; for apple and pear trees, one hundred dollars ; for a washing machine for the laundry, four hundred and seventy-five dollars ; \* \* \* for furnishing new detached building, one thousand dollars ; for general repairs to asylum, one thousand dollars ; for medical books and surgical instruments, two hundred dollars ; for carpenter's tools, one hundred dollars ; for plumbing and steam-fitting tools, two hundred and twenty-five dollars ; for tools for engineer at water-works, one hundred and fifty dollars ; for blacksmith's tools, seventy-five dollars ; for alterations of buildings to accommodate thirty-five more patients, eight hundred and fifty dollars ; \* \* \* for new boiler, one thousand dollars ; and for payment for a horse killed and wagon destroyed by the falling of the said trestle, two hundred and five dollars.

These items are objected to, and not approved, for the reason that I am satisfied that those of them, which are in the nature of permanent improvements, can be well dispensed with at this time, and the others represent small expenditures which should be made from the funds pro-

vided by the State for the general maintenance of the institution.

For the State Homœopathic Asylum at Middletown, for the erection of an addition to one pavilion, for day rooms, the sum of twenty-five thousand dollars, but no part of this appropriation shall be expended except upon plans and specifications for such addition to said pavilion, to be approved by the board of trustees of said asylum and the comptroller, upon estimates and contracts that such work will be completed for a sum not to exceed the amount hereby appropriated for such purpose, and for walks and covered terraces about the exercise grounds of said asylum, and for grading the said grounds, and for draining the flat lands east of the asylum, the sum of six thousand dollars.

These items are objected to, and not approved, for the reason that they are expressly disapproved by the State Board of Charities after an examination made by them, and upon their face they appear to be expenditures not absolutely necessary at this time.

For the widow of the late Henry Gallien, deputy state comptroller, the sum of four thousand dollars, being the amount of the salary of the said Henry Gallien for one year.

This item is objected to, and not approved, for the reason that it grants a gratuity from the treasury of the State, which is neither based upon any equitable claim or legal consideration. While the sentiment involved in this appropriation is creditable, and while it would be exceedingly pleasant for me to join the Legislature in presenting the sum of money mentioned to the family of an employe of the State who died in its service, having for many years faithfully performed the duties pertaining to a most responsible public position, I cannot forget that the money which it is thus proposed to appropriate was drawn from the people by taxation, for the purpose of meeting the necessary expenses of the government, and that we have not their consent to apply it to other objects. It is further undeniable that during all the time of his service and up

to the very day of his death, Mr. Gallien was paid by the State a liberal and generous salary. I cannot think that this gift is permissible if due regard is had to the rights of the people, with such an application of business principles to the subject as they are entitled to demand.

For Mrs. Catherine D. Pierson, widow of William W. Pierson, late journal clerk of the Senate, the sum of eight hundred dollars, being that portion of his annual salary as such journal clerk which has not been paid to him.

This item is of the same character as that last above mentioned, and is objected to, and not approved, for the same reasons.

“ For the State Museum or Natural History, for the printing of labels, binding of books and for stationery, four hundred dollars, to be paid on the certificate of the director and the audit of the comptroller.”

This item is objected to, and not approved, for the reason that the annual appropriation made to the State Museum of Natural History should be sufficient to meet the expenditure provided for in said item.

For the Western House of Refuge \* \* \* for fitting up and furnishing four shops, for the employment of instructors therein, and for material and incidental expenses thereof, to establish a school of technology, fifteen thousand dollars; for compensation for loss of earnings growing out of the change of the hour for schools, and in withdrawing one hundred boys from the shoe shop, six thousand nine hundred dollars.

These items are objected to, and not approved, for the reason that the institution for which these appropriations are intended has within a few months been investigated by a committee from its Board of Managers, and also by another appointed by the last Assembly. Each committee reported that such a condition of affairs had been permitted to exist in this reformatory, as, to say the least, was calculated to impair the confidence of the people in its management, and thus diminish its usefulness. Since these reports were made public, an effort to fill the places

of some of the managers whose terms had expired, failed in such a manner as to plainly indicate a determination on the part of at least some members of the board, to perpetuate its management. It is well for the taxpayers to know whether the State has any control of these institutions, and it is well for the people to inquire whether abuses in a house of refuge intended for the care of children should not be corrected by a change of management.

I have carefully abstained from any interference with the appropriations for the maintenance and repair of this institution as now conducted ; but I deem it my duty to prevent the present management from extending its field of operations at the expense of the State.

For the Comptroller, to be expended under the supervision of the officers of the Gettysburg Battle Field Memorial Association, in the erection of suitable permanent monuments to mark the positions occupied by New York troops in the decisive battle of Gettysburg, and in preserving or reproducing and perpetuating the several defensive works thrown up by them, the sum of ten thousand dollars.

This item is objected to, and not approved, for the reason that the appropriation is to be expended under the supervision of a society, the purposes of which seem but little understood, and which appears to be a private corporation or association. The objects to which the money may be applied are patriotic and praiseworthy ; but an appropriation for these purposes seems to be in conflict with section ten, article eight of the Constitution, which provides that "neither the credit nor the money of the State shall be given or loaned to, or in aid of, any association, corporation or private undertaking."

For collecting, under the supervision and direction of the Secretary of State, all the journals and papers extant kept by the officers and soldiers of

Sullivan's army during the campaign of seventeen hundred and seventy-nine against the Six Nations of Indians, embracing the records of the battle of Newtown, as celebrated on the battle ground, on the twenty-ninth day of August eighteen hundred and seventy-nine, including the address of General William T. Sherman, on the dedication of a monument to the memory of the heroic dead ; including, also, complete records of the centennial celebration of incidents of Sullivan's campaign, held at Waterloo, September third, at Geneva, September sixteenth, and at Aurora, September twenty-fourth, eighteen hundred and seventy-nine ; and for publishing five thousand copies thereof, ten copies thereof to be furnished to each member of the Legislature, one to each officer and reporter thereof, one copy to each officer of the State government, five hundred copies to the State library for exchange and distribution, and the remainder for the board of regents of the university, for distribution as they shall deem advisable, the sum of five thousand dollars, or so much thereof as may be necessary ; the work of collecting and publishing to be let by the secretary of state to the lowest responsible bidder in each case, and the whole work not to cost more than the amount of this appropriation.

This item is objected to, and not approved, for the reason that the matter to be collected and published, with the manner of its distribution, does not seem to be of sufficient public importance to justify the expenditure.

For the commissioners of quarantine, for the purchase of a new boarding tug for the use of the health officer, seven thousand dollars ; for repairs to buildings, roofs, gutters and plumbing, for repairs to rip-rap, for new platform and new timbers for docks at Hoffman island and repairs thereof, two thousand five hundred dollars ; for painting and general repairs of buildings and roofs of the residences of the health officer and his deputy at upper quarantine station, one thousand dollars.      \*      \*      \*

These items are objected to, and not approved, for the reason that they are either not deemed necessary to the maintenance of the quarantine department, or are such expenditures as should be made by the health officer, if essential to the performance of his duties, and met from the enormous income he claims from fees which he is still allowed to retain.

The corporation formed under and pursuant to the authority of chapter four hundred and ninety-two of the laws of eighteen hundred and seventy, for the purpose of constructing warehouses, docks and wharves for quaran-

tine purposes in the bay of New York, shall not be deemed dissolved if it shall commence its operation within two years from the passage of this act.

This item is objected to, and not approved, for the reason that if the existence of the corporation therein named is to be extended, a provision to that effect should not be put in the supply bill. Especially is this true when, as in this case, it is in no way connected with an appropriation having relation to such provision. If the insertion of the items in this bill, which is devoted to entirely different purposes, is at all effective, the objections to this mode of legislating are too obvious to need especial mention.

GROVER CLEVELAND.

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#### ACTS OF THE LEGISLATURE NOT APPROVED.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, June 16, 1884. }

The following described bills, passed by the Legislature, remained in my hands at the time of its adjournment, and have failed to become laws through not receiving the approval of the Executive:

A 746. Amending section 690 of the New York City Consolidation Act, relative to park keepers.

I am quite clear that the keepers of the park provided for by this bill are not a class of employes that should only be discharged after trial.

There are certain workmen who should be subject to discharge at the will of the employer, and I think these keepers belong to that class.

A. 565. For an additional hospital in the upper part of New York city.

The intention of the Commissioners of Charities and Corrections was to obtain authority to purchase and fit up at moderate cost a building for the reception and temporary detention of patients until they could be otherwise provided for.

The engrossed bill omits all mention of a reception hospital within the prescribed limits, and authorizes the comptroller to issue bonds for the sum of fifty thousand dollars for the payment for the land and erection of the hospital.

The secretary of the commissioners informs me that this bill is not what they want at all. Fifty thousand dollars would be entirely insufficient for the purpose contemplated, there is no specific time for the bonds to run, and no means provided for their payment.

A. 388. Supplementary to the law relative to places of amusement in New York city.

This bill exempts, without any apparent reason, a certain hall from the payment of license fees. The title defines it as "supplementary" to a certain act. The body of the bill "amends" the act by adding a new section two. There is already a section two in the act amended. I think the bill is wrong in principle as well as in form.

S. 355. To improve the condition of the sinking fund in New York city.

This bill does not seem to be properly guarded. If the sinking fund is largely in excess of any possible needs, a carefully prepared plan might well be adopted for the payment of certain of the city bonds held by the commissioners. But they should, I think, be particularly specified, and the amount to be annually canceled limited. The cancellation of such revenue bonds as are now held by the commissioners, seems to me particularly objectionable.

The measure is opposed by the commissioners of the sinking fund and other city authorities. It was passed in one house May sixth and the other May fourteenth, and I am not satisfied that it was properly considered.

S. 447. To provide for the appointment of five hundred additional patrolmen in New York city.

This bill provides for an increase in the police force, which, considering the present provisions of law on that subject, I consider unnecessary and unreasonable. The city authorities oppose the bill, and there does not seem to be any way provided for the payment of the additional patrolmen's salaries.

A. 688. To lay out a permanent exterior street in New York city.

This bill contemplates a very extensive improvement. It is opposed by the city authorities, by the dock department, by the projectors of the East Side park, and by some owners of land in the vicinity. It would seem that the owners of the land fronting on the proposed street would be particularly benefited, and yet by the bill the whole expense is to be paid by the city. This is contrary to the rule adopted by the city in other street openings, and seems very objectionable. A part is to be paid by the issue of "dock bonds," and the remainder by the city, apparently from the taxes of one year—at any rate there is no provision for any bonds. I think, even if the purpose of the bill was proper, it is imperfect in form.

A. 493. To alter the map or plan of New York city — Morris avenue.

This bill seems to be unconstitutional, in that it is a local act and contains two subjects, and only one of them is expressed in its title.

A. 569. To authorize New York city to contribute fifty thousand dollars to the Bartholdi statue fund.

This bill, it seems to me, is clearly unconstitutional under section eleven, article eight of the Constitution, which pro-

vides that no city, county, town or village shall be allowed to incur any indebtedness except for county, city, town or village purposes.

The bill also provides for the issuing of revenue bonds without any provision for their payment or that the amount be put in the tax levy.

A. 449. Relative to the claim of George Nunn and William H. Wilson, to be placed upon the pension roll of the fire department of New York city.

This bill should be rejected, if for no other reason, because it provides that if it shall appear that *George Nunn* was permanently injured, the said board are "authorized to place the name of said George Nunn and *William H. Wilson* upon the pension roll."

A. 560. Relative to the claim of Robert T. Bailey against New York city.

The services which were rendered by the applicant named in this bill, I am informed, were rendered as early as 1867. If the comptroller should examine it, he would, I think, be obliged to reject it as barred by limitation. I know of no excuse for the presentation of such very old claims, and I cannot think any just demand would have been allowed to sleep so long.

A. 72. For the relief of Isaac Piser.

This is a claim for services rendered in 1873, eleven years ago, under an appointment as interpreter, which was unauthorized. The applicant for relief nevertheless received his salary from the first day of January, 1870, to the first day of May, 1873. The claim is for eight months more. If the claim has any merit, it has been neglected beyond all reason, and there is great objection to the specification of the kind of proof which the comptroller shall have presented to him.

A. —. Relative to the claim of Mary E. Bleakley against New York city.

The claim mentioned in this bill is a very old one, and is now barred by the statute of limitations. I do not think under this bill the comptroller could find that there is anything "justly due." In that view it is useless. If the bill has the effect of reviving the claim, it is very objectionable, because it deprives the city of a defense which it has secured under the law.

S. 414. For the relief of Wesley S. Yard.

This claim is more than ten years old, and ought not to be considered for that reason alone. And if the comptroller should consider it, he ought to promptly reject it as barred by limitation.

S. 211. To provide for the repavement of Fifth avenue, New York city.

1. The provision in this bill that if a bid is not received for four hundred thousand dollars or less, the work may be readvertised, and on such readvertisement the work may be let upon the lowest bid, which is for five hundred thousand dollars or less, is a direct invitation to those bidding to force a readvertisement, and consequent higher bids. A better scheme for corrupt combinations between bidders and resulting loss to the city could not be devised.

2. There is no discretion as to the kind of pavement. It must be granite.

3. There is no provision for raising money by tax to pay the principal and interest of the bonds.

A. 334. To prohibit "bucket-shop" business.

This bill is, I fear, so artificially drawn that it will prohibit any contract for the sale of stock not actually delivered. If I understand it, the prohibitions of the bill would go much further than its promoters intended, and subject to

punishment persons who do not deem themselves in immediate danger.

I believe "bucket shops" should be suppressed, but I think a better bill should be devised for that purpose.

S. 328. To amend section twenty-two of the Code of Criminal Procedure.

This bill, as I understand it, allows the Oyer and Terminer, on its own motion, in any case, to remove an indictment to that court for trial. I think this is a little *broad*.

S. 304. To amend section forty-nine of the Code of Criminal Procedure relative to compensation of justices of sessions in Kings county.

I know of no reason why Kings county should be excepted from section forty-nine.

S. 413. To amend section five hundred and twenty-eight of the Code of Civil Procedure.

This bill permits the Court of Appeals in a capital case to grant a new trial, if it be satisfied that the verdict was against the law or evidence, or that justice requires it, whether any exception shall have been taken or not.

This is a wide departure from the present practice. I am willing to extend proper opportunities to a prisoner condemned to death; but I am in extreme doubt whether this bill, if signed, would not force counsel for the convict to go to the Court of Appeals upon the chance offered in any capital case, thus adding to the delay of punishment and the labor of the highest court of law, with no corresponding advantage to the condemned.

The amendment is also disapproved by public prosecutors of learning and experience, to whom it has been submitted.

S. 379. To amend sections five hundred and seventy-nine and five hundred and eighty of the Code of Criminal Procedure.

The object of this bill is to allow bail to be taken for a party arrested upon an indictment, whether for a felony or

misdemeanor, in any part of this State where he may be arrested. The object of a bench-warrant is to secure the attendance of the indicted to plead to the indictment and be tried. I am not sure that allowing bail to be taken in case of felonies where the defendant is arrested is an improvement. However that may be, in specifying the magistrates which shall take such bail, the bill speaks of the class mentioned in the *second subdivision of section five hundred and fifty-seven*. There is no such subdivision, and if this additional power is to be given to judicial officers there ought to be no uncertainty as to who they should be.

S. 43. To amend section seven hundred and ninety-two of the Code of Criminal Procedure.

Section seven hundred and ninety-two has reference to *search warrants*. This bill amends by calling them *warrants*. They are entirely distinct, and I think the amendment should at least begin by saying, "Such warrant," instead of "A warrant." I do not see that this bill is really needed, since chapter four hundred and ninety-six of the Laws of eighteen hundred and eighty-one appears to furnish ample remedy.

A. 403. To amend subdivision two of section one hundred and ninety-one of the Code of Civil Procedure.

This bill would permit an appeal to the Court of Appeals from the Marine Court (city court of New York), without the consent of the General Term.

In the present condition of the calendar of the Court of Appeals, I think this new access to that court should not be allowed.

A. —. To amend section ninety-seven of the Code of Civil Procedure.

I can see no sense in this bill. It apparently allows the county judge of Westchester county to *name* the constables

who shall attend not only the County Court, but the terms of the Supreme Court. It does not appear to be confined to the number, but includes the *persons*.

A. 333. To amend section seven hundred and fifty-seven of the Code of Civil Procedure.

This bill, it appears to me, is too broad. There is a difficulty about serving notice of motion on a foreign executor. It seems to permit the action to proceed against him for the entire claim, if only a small part of the deceased's assets have been brought into the State, and I do not see why it does not permit the whole claim to be prosecuted against him personally, though he may have acquired but very little of the property of the deceased "in trust for himself as devisee or legatee under the will."

S. 234. To amend section seven hundred and ninety-one of the Code of Civil Procedure.

I am not satisfied of the propriety of making the proposed addition to the already long list of preferred causes.

S. 239. To amend section eight hundred and thirty-one of the Code of Civil Procedure.

The amendment proposed by this bill permits a wife, in any proceedings involving the allegation of adultery, to testify not only to the fact of marriage, but to disprove the charge of adultery. This, it seems to me, is equivalent to allowing her to testify generally in such a case, and is in direct opposition to the long established policy of the law. As a practical question, it would lead to perjury or to silence when she might speak, which would constantly be urged as a tacit admission of guilt.

A 355. To amend section twelve hundred and seventeen of the Code of Civil Procedure.

The interpolation of the word "apparently" in this bill would, I think, lead to confusion and injustice.

S. 191. To amend section thirteen hundred and twenty-five of the Code of Civil Procedure.

This allows a year to appeal in a case in which permission of the General Term is necessary. Application for such consent must be made at the General Term rendering the determination, or at the next term. There should be some provision permitting an appeal allowed by the General Term within a certain time after the order is granted. But this amendment is ambiguous and susceptible of doubtful construction.

S. 330. To amend section twenty-two hundred and thirty-one of the Code of Civil Procedure, relative to rents and taxes.

I approve of the purpose of this bill, but cannot sign it, for the reason that the word "owning," in next to the last line of section two should be "owing." This, I think, is a mistake important enough to call on me to reject the bill.

S. 67. To amend section twenty-seven hundred and twenty-two, twenty-eight hundred and two, twenty-eight hundred and thirty-seven and twenty-seven hundred and ninety-three of the Code of Civil Procedure.

I think this bill imposes an unreasonable burden on the parties pursuing administrators, guardians, etc. (72 N. Y., 565; 81 N. Y., 573; 87 N. Y., 572.)

A. 391. To amend section twenty-nine hundred and ten of the Code of Civil Procedure.

The propriety of this bill is extremely doubtful. It requires the constable to serve the *affidavits*, etc.—not copies.

It is very clear that the original of these papers should be retained by the justice.

A. 133. To amend section three thousand and twenty-four of the Code of Civil Procedure, relative to the issue of executions upon judgments by justices of the peace.

I think this case is already sufficiently provided for by section three thousand and twenty-four and three thousand and twenty-seven.

S. 367. To amend section twenty-eight hundred and seventy-nine of the Code of Civil Procedure.

This bill is too indefinite as to the person who shall be deemed a general or local agent.

A. —. Relative to notaries public in Erie county.

The present law provides for a sufficient number of notaries.

S. 359. Relative to weeds and brush in public highways.

Only the first section amends chapter forty-nine of the Laws of eighteen hundred and seventy-eight. The rest are independent provisions, and confuse, instead of amending, the law of eighteen hundred and seventy-eight.

A. 90. Relative to preservation of game.

The word "birds" is omitted from the title of the bill. It provides for exemplary damages and a penalty for a private trespass, and there is no such officer as superintendent of the poor of towns—it is "*overseer*."

A. 375. Relating to the preservation of game.

The law hereby amended is repealed by section forty of chapter five hundred and thirty-four of the Laws of eighteen hundred and seventy-nine.

A. 648. Relative to the removal of obstructions in Chautauqua lake.

This is not a proper appropriation of State money—not a State water highway. See veto of Governor Cornell, papers of eighteen hundred and eighty-one, page sixty-one.

S. 590 Relative to payment of school taxes by railroad companies.

I cannot imagine why the county of Cattaraugus should be excepted from the general Law of eighteen hundred and eighty-one, and no reason has been suggested.

S. 375. Amending corporation tax law.

The title is to amend chapter one hundred and fifty-one of the Laws of eighteen hundred and eighty-two.

The first section amends section nine of chapter three hundred and sixty-one of the Laws of eighteen hundred and eighty-one. This latter chapter has but two sections. See confusion and nonsense in lines ten, eleven, twelve, thirteen and fourteen.

Section two amends section eleven of chapter one hundred and fifty-one of eighteen hundred and eighty-two. There is no such section.

The first section amended strikes out the remedy by suit. The second section amended refers to a suit thus brought. It is all wrong.

S. 308. Relative to the formation of railroad corporations.

Section fourteen of the law of eighteen hundred and eighty-one is: "This act shall take effect immediately." This remains untouched, and the effect of this bill is to add another section fourteen. I do not think the title should be amended in the manner proposed.

A. 351. To define the duties of railroad commissioners.

Railroad companies are not required to report before December first, so that the Comptroller would have no data to assess by on December first, for the year ending the previous September thirtieth.

S. 336. To incorporate the State Loan and Trust Company of the city of New York.

I think this company should be made expressly subject to the provisions of the revision of the banking law of one thousand eight hundred and eighty-two (see sections two hundred and nineteen to two hundred and thirty-four), which are applicable to trust companies. These special charters for corporations of this description give very extensive and dangerous powers, and they should be well guarded. I fur-

ther agree with the Superintendent of the Banking Department in his disapproval of this bill, on the ground that it allows the company to become security for public officers (see section eleven, subdivision nine), and because it allows a branch to be established in Brooklyn.

S. 53. Relative to banks, banking and trust companies

This bill does not change the *status* of foreign associations, I think.

A 635. To amend the act to authorize the formation of railroad corporations in foreign countries.

This is all wrong. The bill does not specify any amendment to the law of eighteen hundred and eighty-one, and makes no place for the provisions of the bill in the original act. Besides, it describes the act to be amended in the title as passed June third; it should be June sixth.

A. 273. Relative to formation of town insurance companies.

The law which this bill seeks to amend was repealed by chapter three hundred and forty-seven of the laws of eighteen · · · · · hundred and sixty-two, which saved such corporations as had been organized under the statute thus repealed.

Instead of attempting to amend a law that has been repealed, this bill should, as an original act, give companies now existing under it the additional powers which is attempted to be given by this amendment, if thought proper.

A. 274. Relative to mutual insurance companies in certain towns in Albany and Greene counties.

This bill embraces two subjects:

1st. Amending previous statutes, etc.

2d. Extending corporate existence of a certain corporation.

It is a local and private bill, and embracing more than one subject not expressed in the bill, is unconstitutional. (Art. 3, sec. 16.)

S. 22. To regulate the defense of suicide by life insurance companies in cases of insanity.

I do not see why a person should not be permitted to deliberately make an agreement with an insurance company to the effect that the policy should not cover a loss by suicide, though the insured at the time of death should be insane.

A. 715. To except the town of Pultney from the operation of laws prohibiting the laying out of highways through orchards and vineyards.

This is the worst kind of special legislation, and there has been no pretext presented to me why it should be indulged in in this case.

S. 437. Relative to Board of Health of Saratoga Springs.

It seems to me that the power vested by this bill in the trustees of the village, to appoint a health physician for the village *and town*, who shall be a member of the board of health of such village *and town*, is unconstitutional, the trustees of the village not being authorities of the town. (See Constitution, art. 10, sec. 2.)

A. 528. Relative to the support of the Syracuse fire department.

I think this bill is unconstitutional so far as it affects present incumbents of office. See Constitution, article three, section eighteen, subdivision as to "creating, increasing or decreasing fees, per centages or allowances of public officers during the term for which said officers are elected or appointed."

A. 580. Relative to repairs of highways from Wilmington to North Elba.

This bill contains matter not expressed in its title in relation to the settlement of the accounts of the commissioners, and the application of certain moneys to the improvement of a highway. On this account it is, I think, unconstitutional. It seems that an effort was made to amend the title so that it would come nearer to covering the provisions of the bill.

The object of the bill was not, however, added to the title, and if it had been, I am not sure that it would have helped matters.

A. 405. To amend the charter of Newburgh.

The first section of chapter five hundred and forty-one of the Laws of eighteen hundred and sixty-five, amended by section four of this bill, describes the boundaries of the city.

By the proposed amendment the boundaries would be stricken out and the officers of the city put in their place. Under this state of things the city charter would have two sections (section 1 and section 1 of title 2), designating the officers of the city, but it would be without boundaries.

A. 504. Relating to a separate road district in Northfield.

No reason has been presented to me for the passage of this bill, and it is represented that the citizens are opposed to it. The number of commissioners was fixed at one in eighteen hundred and eighty, and I have no reason to suppose that a single commissioner is not equal to the emergency.

A. 439. To authorize the construction of a bridge over the canal in Newark.

I can see no good reason why the State should build this bridge for the people of Newark.

A. 336. To legalize the title of the St. Paul's Methodist Episcopal church of Onondaga Valley to certain lands.

If the conveyance by the surviving trustee was valid and effectual, no law confirming it is needed. If it was not, it was in derogation of the rights of the *cestui qui trust*, which ought not to be swept away by the Legislature, even if it has the right or power to do so.

A. 658. Relative to the Oswego water supply.

This bill is opposed by the Mayor of Oswego and twelve out of fourteen of the Aldermen, and I think this a good reason for withholding my signature.

The city now has a contract with a company to furnish water to the city which extends for four years longer.

A. 440. Relative to waste gates in the Erie canal in the village of Spencerport.

There is no public interest subserved by this bill. Certain millers were using the waters of the canal, and by their dams caused an overflow, which the Board of Health condemned as a nuisance, and directed the canal authorities to clear the waste weir, which was done. The object of this bill is to build another to accommodate the mills.

A. 778. To authorize the Syracuse Water Company to supply the village adjacent to Syracuse with water.

I think the title of this bill does not properly express the subject of the same. It purports to be a bill authorizing the Syracuse Water Company to supply the *village* adjacent to Syracuse with water. The bill declares that said company shall supply with water "*any* village adjacent or *near to* said city."

S. 348. To provide the city of Utica with water.

I do not think the provisions of this bill, which contemplate taking the property of the Utica Water-Works Company are legal; or, if legal, sufficient. It is at least very doubtful whether the lands or easements which have once been condemned for public use by the water-works company can be again condemned for the same use. If they can, this bill does not adequately provide for the appraisal of the contract with the city which the proceedings will nullify. No rule is laid down for determining the value of this, nor

any of the easements of the company. The plan of appraisal adopted by this bill is that contained in the general railroad law, which only provides for the appraisal of real estate. If the right to thus take the property was legal, and if the provisions were adequate, I still think the city ought not, on principle, fairness and good faith, to acquire to itself the subject of the contract with this company, and annul said contract, making no provision for the debts of the company.

S. 309. To amend the charter of Troy, relative to violation of the excise laws.

This bill is fatally defective because a part of it, as passed, is omitted in engrossing. I am by no means sure that the provision allowing the superintendent of the poor and attorney to satisfy judgments is proper. If the judgments belong to the city they can be compromised and settled (probably) by the city authorities. If they, or any part of them, belong to third parties, the city authorities ought not to be allowed to settle them.

A. 495. Relative to the public peace in the town of Watervliet.

My opinion is that the locality named in this bill has now only an adequate police force. If four policemen were needed in eighteen hundred and eighty-one, I think they are needed now. The cutting down the appropriation from two thousand five hundred dollars to one thousand five hundred dollars, would, of course, reduce the force, which, I think, is unwise.

A. 282. Relative to the purchase of hose for the fire department of Saratoga Springs.

If the amount authorized to be expended by this bill cannot be put in the tax levy after June third (as I am advised), there is no use in signing this bill after that date.

The bill is not drawn properly, inasmuch as it provides that the trustees may expend upon the faith and credit of the village in the first section, and provides that it shall be raised with the other taxes for the year one thousand eight hundred and eighty-four in the second section.

Section two is also blind and ungrammatical. I am of the opinion that the subject had better be delayed.

A. 689. Relative to the disposal of sewage in the village of Saratoga Springs.

The attempt in this bill to blend independent provisions with amendments of the law of one thousand eight hundred and eighty-one, has bred such confusion that I am sure the proposed law would be a source of embarrassment and trouble. The amendment of the law of one thousand eight hundred and eighty-one authorizes issuing bonds of the *town* in anticipation of the receipt of the money provided by *this act*; whereas, the money spoken of is not raised under the amended law of eighteen hundred and eighty-one, but by the independent provision of the act of eighteen hundred and eighty-four. The whole thing is a jumble.

A. 627. To amend the act to authorize the town of Glenville to purchase a bridge.

The present law on the subject contained in this bill seems sufficient. It is the citizen or taxpayer that is now exempted; and if exempted at all, it should make no difference whether the vehicle he rides in is owned within the limits of the town or not.

A. 787. To enable corporations to extend their existence.

The power to extend the existence of all corporations formed under general laws by a vote of the stockholders is now given by chapter twenty-nine of the Laws of eighteen hundred and fifty-seven, and chapter nine hundred and

thirty-seven of the Laws of eighteen hundred and sixty-seven. If corporations formed under special laws are unprovided for, these statutes relating to other corporations might be extended to them, but I do not think that in all cases it should be left to the directors, instead of the stockholders, to extend the corporate existence to an indefinite and unlimited time.

A. 342. To authorize the Yates County Agricultural Society to sell and convey a portion of its real estate.

Agricultural societies formed under chapter four hundred and twenty-five of the Laws of eighteen hundred and fifty-five may sell real estate by consent of the court. (See section seven of that act.)

A. 417. To amend the charter of Buffalo.

A bill has been lately approved providing for the appointment of commissioners to revise or prepare a charter for the city of Buffalo, who are directed to report such charter to the next Legislature.

This bill contains several quite important changes in the present law, and, if approved, may have the effect of confusing the provisions of the new charter; or they may hardly be in operation before they are superseded by the new law. On the whole, I am inclined to leave all alterations to be embodied in the new charter, which I hope will be a very complete one.

S. 227. To authorize the formation of the New York Transit Company.

The amendment of this bill in section three, which is written over an erasure, makes a muddle of the language of the bill by authorizing railroad and steamboat companies and hotel proprietors, and requiring them to issue licenses. This language in the original bill applied to the Board of Police.

By section eight any railroad or steamboat employe, or hotel keeper or employe, who shall refuse to grant the employes or agents of said company any of the rights and privileges granted them under the terms and conditions of the foregoing sections of the act may be sued, etc.

This verbiage fitted the bill when there was no provision for consent of hotel keepers, but it is hardly applicable to the bill as it now appears.

See provisions of section three written over erasures (amendment) and provisions of section eight. The last are unnecessary after the amendment to section three.

A. 534. Amending charter of Montezuma.

A remonstrance is presented against this bill; various officers are abolished by it, and an error in the third section in speaking of "highway labor in said section," renders it nonsense.

S. —. Relative to school system of Ithaca.

*First.* The authority to raise the money by installments contemplates that a certain part of the same shall be put in the tax levy for each year, according to the installments determined on.

The certificates are not contemplated at all.

*Second.* The rate of interest is too high.

*Third.* There are two subjects in the bill, to wit: The right to issue certificates, and the enlargement of the powers of the Ithaca Savings Bank.

*Fourth.* It gives the savings bank an exclusive privilege, to wit: To alone, of all the savings banks, invest in these certificates.

A. 633. In relation to the village of Geneva, Ontario county.

The case provided for by this bill is embraced in a bill

regulating railroads, passed at the last session of the Legislature (1884), and which has been approved.

A. 662. To authorize the village of Danforth to contract with the Syracuse Water Company.

A bill passed authorizing the Syracuse Water-Works Company to supply the villages adjacent or near to said city, has been disapproved and not signed.

As this bill, if signed, would not accomplish any purpose, on account of want of authority in the Syracuse Water Company to contract, I think it best not to approve the same.

A. 555. To authorize the Supervisor of Denmark to convey certain land.

This apparently permits the supervisor of Denmark to convey without compensation the land of the town to a private corporation without the special assent of the town. This should not be done in any event; and the giving away of the land of the town in this way is prohibited by section eleven, article eight of the Constitution.

S. —. Relating to Union school district in towns of Lysander and Van Buren.

The superintendent of public instruction, to whom this bill was referred, is of the opinion that the power sought to be conferred by the amendment proposed in this bill is already vested in the board of education of the union free school district named in the bill.

A. 727. Relative to voting at town meetings on propositions to raise money by tax.

The law amended by this bill prescribes the manner of voting to raise money in sums over five hundred dollars. This bill has different provisions for all cases, regardless of amount. The latter, if proper in other respects (which I doubt), might well supersede the present law; but stand-

ing with it, and becoming a part of it, must lead to uncertainty and confusion.

A. 589. To legalize the acts of the trustees of the First Presbyterian church of Batchellerville.

The sale of the church property was absolutely void, and I do not think the proposed law would vest a good title in the purchasers. And if this conveyance can be made effective by legislation, I think it should be passed with the approval of the congregation.

A. 660 To renew the charter of the Salisbury and Manheim Plank-Road Company.

The charter of this plank-road company expired November fifteenth, eighteen hundred and seventy-eight. On the twenty-second day of November, eighteen hundred and seventy-eight, the board of supervisors, under the law of eighteen hundred and seventy-six, passed a resolution extending the charter. This was the proper mode of securing the extension, and it is provided by general law. In the fear of the futility of the action of the board of supervisors this bill is proposed, giving retroactive effect, and renewing the charter from November fifteenth, eighteen hundred and seventy-six. In the meantime the people have acquired rights by the expiration of this monopoly, which I do not think should be destroyed in the manner proposed by this bill.

A. 652. To provide for the payment of certain claims for work done on the Amsterdam Water-Works.

I should like to aid the parties who furnished materials and did work for the contractors at Amsterdam; but as the village has paid all it owed to the contractors, and is in no way liable to the others, I do not see but that any further payment to the creditors of the contractors would be a gratuity prohibited by section eleven, article eight of the Constitution.

A. 659. Relative to assessments for paving in the city of Albany.

The mayor objects to this bill, and I agree with him that it authorizes too large a sum to be annually expended for the purposes named.

S. 443. Releasing certain lands in Syracuse to Harriet N. Marvin.

On the 6th day of May, 1884, the Land Board passed a resolution that the land described in this bill, and other lands, be advertised and sold, as being "largely in arrears for principal and interest."

I do not understand this.

A. 506. To prevent obstruction of the highways by snow drifting.

The ascertainment of damages is not in accordance with article one, section seven of the Constitution. Commissioners of appraisal should be appointed by the court.

S. --. Incorporating Uniformed Veterans, Twenty-third regiment, National Guard.

I think the present law is sufficient to permit the organization provided for by this bill.

S. --. To prevent persons from wearing the badge of the Grand Army of the Republic.

This bill makes it a misdemeanor to wear a badge of the Grand Army. The wearing need not be characterized by any intent, but is criminal if not in accordance with the rules and regulations of an army post with which the wearer may be entirely unacquainted, and the penalty recovered on conviction is left in its disposition altogether too indefinite.

S. --. To incorporate the Veteran Association, Seventy-first regiment, National Guard.

I am satisfied that the present general laws are sufficient for the proper organization of this Veteran Association.

A. 479. To prevent sale of cigarettes to children.

The title of this bill is "An act prohibiting the sale or

giving away of cigarettes to any minor under the age of fourteen years."

But the law does not prohibit the giving away, only the sale, and allowing to be given away. It goes too far or not far enough.

A. 39. To regulate the hours of labor of drivers and conductors of horse cars in cities.

I fail to see any good purpose to be gained by this bill. It is distinctly and palpably class legislation, in that it only applies to conductors and drivers on horse railroads. It does not prohibit the making of a contract for any number of hours' work, I think; and if it does, it is an interference with the employer's as well as employe's rights.

If the car drivers and conductors work fewer hours, they must receive less pay; and this bill does not prevent that. I cannot think this bill is in the interest of the workingman.

A. 484. To provide for the assessment of property in certain cases, and to regulate and equalize the same.

This would be a troublesome and might be a very vexatious proceeding. If the present law does not reach the case herein provided for, it would be much better to declare the omission of property of assessors by them a misdemeanor.

A. 67. In relation to appeals from surrogates' courts.

I cannot quite understand this bill, which I think is a good reason why I should not sign it.

There is beside an evident omission of something in line thirteen, after "eighty." Probably the words "such party" should have been inserted.

A. 544. To provide for the payment of services rendered by Benjamin F. Congdon.

There must be a better way than that designed by this bill to settle the claim therein mentioned. It is not entirely cer-

tain that the costs and expenses of proving the claim should be included in the recovery, nor that the claim should be paid out of the annuity. And if it should be so paid, it cannot be under this bill, as "annuity" reads "annuity," which is an absurdity.

S. 347. To require the Secretary of State to procure a suitable plate and to print certificates to be presented to honorably discharged soldiers and sailors who served the United States from the State of New York.

This, if done at all, should be done by the Adjutant-General.

S. 278. To create a forest commission for the State of New York.

This bill came to my hands after the adjournment of the Legislature, which rendered it impossible for me to appoint a commission under its provisions. In the meantime, in the supply bill, an appropriation is made, to be expended by the comptroller for purposes almost or quite identical with those with which the commissioner under this bill would be charged. I am of the opinion that if this bill is signed, though no commissioner is appointed, it would prevent the expenditure under the supply bill. At any rate there would be danger of such a result. In this event the object sought would entirely fail. This bill provides that a commissioner shall be nominated for confirmation by the Senate within ten days. This cannot be done, and I am clear that the whole subject, so far as it is embraced in this bill, had better be postponed.

A. 731. To annex the town of New Lots to the city of Brooklyn.

It is represented to me that if this bill is signed the project of annexation will be defeated by the voters at the polls.

I think the bill is faulty. In the first section it declares that the town of New Lots *is annexed*, and afterwards pro-

vides that the people shall determine the question *at the next election*, and it is declared that the law shall take effect *immediately*. I think it should have provided that all but the section submitting the subject to the people should take effect January first, eighteen hundred and eighty-five. (See chap. 613, Laws of 1873.)

A. 530. To authorize the town board of Flatbush to license and regulate public hacks, vehicles, vendors and peddlers.

This bill represents a kind of special legislation which should be discouraged. The provision is especially objectionable which directs the Court of Special Sessions to pay over the amount of penalties, less the expenses of conviction, to the town board. All should be paid over and the expenses of the convictions afterward paid by the town.

S. 405. To organize the Veteran Reserve of the National Guard.

The association of the veterans of the National Guard for social and benevolent objects, and to foster and keep alive their interest in the parent organization, is a laudable and pleasant thing to do. And this can be fully accomplished under existing statutes. There seems to be much interest manifested in this bill, and I am exceeding sorry that my ideas of duty to the State oblige me to refuse to approve the measure.

The National Guard is a department of the State of great importance, though I fear this fact is not fully appreciated for the reason that their services are ordinarily not needed. I place so much importance, however, upon the proper maintenance of the Guard that I am unwilling to do anything which, in the almost unanimous opinion of those connected with it, and in my own judgment, will impair its efficiency or injure its *morale*.

This bill merely creates a separate military establishment,

amenable to none of the laws that regulate the regular guard, and not subject to the constituted military authorities of the State. They elect their own officers, and call upon the Governor to grant them a military commission without regard to their fitness to perform any military duty. They are subject to no military service except upon the command of the Governor, in the absence of the regiment of which they are veterans; and they cannot be called away from home on any duty. Their rules and regulations are entirely of their own making, and their uniforms (and probably their *arms*) of their own selection. In such circumstances I am sure that it might well be considered as exceedingly risky to call on such organizations for serious military service. Their practical usefulness to the State not being a sufficient reason for signing the bill, it is my opinion that the rank and uniform of soldiers should not be given by the State to these voluntary and self-regulating organizations. Military titles should be given by the State to military men, and it should dictate the uniform its soldiers shall wear with a view to practical work and usefulness. To cheapen these things by according them to others than the soldiers of the State, cannot fail, it seems to me, to breed natural discontent, and bring about a lack of hearty enthusiasm, upon which the usefulness of the Guard so much depends. I hope that the veteran associations may continue as at present organized, or as they now have the right, will organize, and in a proper and useful sphere do much to support and encourage the active soldiers of the Guard.

S. 458 To amend charter of Saratoga Springs.

The trustees of the village of Saratoga Springs have ample power to prescribe the places where hacks shall stand,

and they should manage the matter and not shirk the duty. The Legislature has no business with it.

A. 767. Amending an act for the incorporation of societies or clubs for certain social and recreative purposes.

Chapter three hundred and sixty-eight of eighteen hundred and sixty-five, was amended by chapter seven hundred and ninety-nine of eighteen hundred and sixty-seven, allowing trustees, etc., to be divided into classes and a part to be elected annually. It was further amended by chapter six hundred and ninety-eight of eighteen hundred and seventy-three, so the number might be increased to thirteen in substantially the same manner as proposed by this bill.

The bill nullifies and ignores both of these amendments, and changes the original act so that the number of trustees can be increased indefinitely, but not diminished as was provided by the amendment of eighteen hundred and seventy-three.

The power to classify is lost as well as the power to diminish, and the increase may be without limit.

These are objections which I regard as vital.

S. 341. To incorporate the Safety Elevator Insurance Company of New York.

I doubt the propriety of allowing an insurance against liability for damages which may be claimed against the insured arising from accidents in an elevator. Will it not tend to the relaxation of care in their management, and increase danger to life and limb?

The individual liability of the stockholders should not be limited to the amount unpaid on the stock.

A. 168. Amending act to prevent adulteration of food and drugs.

The title of this bill declares it to be an amendment of chapter four hundred and seven of the Laws of

eighteen hundred and eighty-one. But that is the last that is said on the subject of amendments. On the contrary, it appears to be an entirely independent act, reproducing the act of eighteen hundred and eighty-one, with alterations, and in some cases prescribing different penalties for the same offense.

It does not even repeal the Law of eighteen hundred and eighty-one in terms.

Besides the imperfections in the construction of the bill, it does not seem to be just right in substance.

Ought a man to be punished who innocently and in good faith has, or even sells, adulterated drugs?

A. 802. Amending act for relief of corporations organized under general laws.

It seems to me the law of eighteen hundred and seventy goes far enough.

This bill permits any infirmity or omission in any application or proceedings in relation to the same to be cured simply by the filing of an amended certificate, with no amendment of anything else connected with the formation of the corporation.

A. 277. Amending act to provide for the organization and regulation of certain business corporations.

I think authority for a corporation to mortgage its property should rest upon a vote of its stockholders, as is now provided by the general manufacturing law, and that the directors should not be permitted to make such a mortgage in the absence of such permission. This bill is unintelligible where it provides that bonds may be issued, "secured by mortgage on its real estate not so secured." Something is evidently omitted.

A. 625. To establish a board of assessors in Richmond county.

This bill provides for largely increasing the expenses of assessing property in Richmond county. It is special legislation designed to exempt the county from the operations of the general State law, and the people of that locality seem to be opposed to it.

A. 486. Relating to the administration of oaths in canal business.

This bill is fatally defective in that it provides for the filing of certain signatures with "the Auditor of the Canal Department," which officer no longer exists under the statutes.

A. 683 Relating to the sheriff of Rensselaer county.

I cannot understand why this bill is not unconstitutional. It certainly *fixes* the compensation, even if it does not increase or diminish it, of the present sheriff, and also his allowances.

A. 255. Compensation of supervisors in Monroe, Orleans and Broome counties.

No reason appears why the supervisors of the three counties named should be paid more than those of other counties. If supervisors do not receive sufficient compensation, a general law should be passed changing the existing statute.

This bill would increase the compensation of officers now in office, which is in direct violation of the Constitution of the State. (Const., art. 3, sec. 18, sub. 10, and art. 3, sec. 24.)

A. 312. For the reclamation of overflowed lands adjoining the Indian river in Jefferson and St. Lawrence counties.

I cannot understand why injuries to the riparian owners, of the kind named in this bill, should be sued for by the commissioners appointed for entirely different purposes. It is specially provided that the damages to be recovered shall be only such as the owners themselves might recover, and the remedy provided for by injunction is the usual one resorted to between individuals in such cases. I do not see why the

people themselves should not prosecute. In a letter presented to me in favor of the bill, its object is declared to be to relieve the owners themselves from beginning such suits.

A. 784. For the conveyance of lands — J. Stewart Dennison.

The proposition contained in this bill is to release whatever interest the State may have in land in Warren county to a perfect stranger, who has no equitable or other claim, such as is usually presented in like cases. If he has claims against the estate of the deceased alien, he should enforce them in such a way as to cause the land to be sold for their payment; and after he has gained such a title, it will be in order, if necessary, for the State to release or the Land Board to convey, when permission is given them to do so.

A. 575. Conveying lands in Franklin county to Robert Schroeder.

The policy of the State is settled to prevent the transfer of these lands, and I see no reason why the premises described in this bill should be transferred to Mr. Schroeder. It is said that the aquisition of the tract is of importance to him on account of its possessing a pleasant view and a pond in which he wants to fish. The view will be fully as pleasant if the State retains the title to the land, and I do not think that his fishing will be seriously interfered with by the failure of this bill.

S. 344. To amend sections 315 and 316 of the Code of Civil Procedure.

The object of this bill is to increase the jurisdiction of the former Marine Court, now City Court, in the city of New York, from twenty-five hundred dollars, as now limited, to causes involving a sum not exceeding five thousand dollars.

With all the other courts in the city of New York having

jurisdiction exceeding that of the court in question, I can see no good reason for extending its jurisdiction at this time.

S. 292. Amending the New York City Consolidation Act, relative to the board of health.

This bill is intended to enlarge the powers of the board of health. Whatever may be the merits of the measure, an insuperable objection to its becoming a law, in my mind, is the provision therein contained that a summons may be served on parties violating certain ordinances or regulations of the board of health by posting the same upon the premises or even upon an unoccupied lot, and by mailing a copy thereof to the owner or principal, if his place of residence be known.

As I understand the bill, such service might be followed by entry of a judgment for quite a large penalty against such person. I regard this manner of service entirely inadequate.

S. 340. To amend the Consolidation Act of the city of New York in reference to the erection of buildings.

The purpose and object of this bill is important; and it seems to have received a good deal of attention from parties who know what is needed in reference to matters of which it treats, but the construction of the bill is so faulty, the inaccuracies and mistakes in its language are so numerous, and some of them so likely to lead to complications, that much as I approve of the object of the measure, I have determined to withhold my signature from it.

As one instance of carelessness displayed in drawing this bill, I refer to the amendment to section thirty-two, amending section five hundred and five of the consolidation act which gives to the superintendent of buildings power "to remit any fine or fines, penalty or penalties, which any person or persons may have incurred, or may hereafter incur, under

any of the provisions of *this act*" — the "act" referred to being what is called the consolidation act, providing for the government of the city of New York. There are numerous fines and penalties having no relation to the subject treated of in this bill, which, under its language, the superintendent of buildings would have power to remit. This, of course, was never intended.

S. 325. To repeal certain acts relative to the city of New York.

The object of this bill is to repeal laws in existence, some of them for a very long time before the consolidation act of 1882 was passed, and the most valuable parts of which are now embraced in the said last mentioned act. Some objection has been made to the repeal of these old acts by citizens who fear that some omission in the consolidation act may make it necessary to fall back upon the old statutes. It has been suggested, too, that some of the particular laws repealed by this act ought to stand. I am of the opinion that the matter can, without any detriment to the public interests, be postponed to another Legislature.

S. 262. Tenure of office ; and

A. 471. Three-headed park commission.

I have given the reasons at length for withholding my approval to these bills in the memorandum filed with the bill relating to the register of the city of New York.

S. 421. To provide for an additional Aqueduct Commissioner.

The object of this bill is to provide for the addition of the president of the board of fire commissioners to the aqueduct commissioners already in office.

The board as now constituted seems to have the work well in hand, and I can see no good purpose to be gained by an addition to their number.

A. 473. To extend the length of the pier in the North river between West Forty-first and Forty-second streets, New York city.

The construction of the pier provided for by this bill is strongly opposed by the public authorities of the city of New York, as I think, upon very substantial grounds. It is claimed that the present pier is an illegal structure, which this bill would legalize, and that it would seriously interfere with and in a measure destroy the piers which are provided to be built at the foot of Forty-first and Forty-second streets, and that it would give special privileges to the Metropolitan Gas Company. I think care should be taken not to injuriously interfere with the general plans of the dock department, in view of the constantly increasing demands of commerce.

A. 459. To authorize the election of additional justice of the peace in the city of Brooklyn, and to create an additional district.

The judicial districts in Brooklyn were rearranged at the session of the Legislature preceding the last, and the necessities of the city were supposed then to be fully met. I am not satisfied that the wants of the people require the additional justice provided for, and I consider the bill an unwise interference with the districts so lately established.

S. 436. Relative to gas-light companies in the county of Kings.

1st. The title of this bill is to amend a general law of eighteen hundred and forty-eight "as to the county of Kings."

2d. The bill itself is not an amendment of any existing provision of the general law, but an entirely independent act, and a special act at that.

3d. If the title is not so misleading as to vitiate the bill, it must still be considered a special act, and in that view it contains more than one subject, to wit: Regulations for the county of Kings, and also separate and distinct regulations for the city of Brooklyn.

4th. The purpose of the bill is plainly to establish a monopoly among such gas companies as already have consents from the municipal authorities.

A. 519. To provide for and define public or legislative printing.

This act changes entirely the mode of contracting for legislative printing, by directing that all of the different kinds of printing shall be regulated by a separate contract or specified prices. The present plan has been in force but a few years, and as I understand it, has given quite general satisfaction, and I see no good reason for changing it.

A. 770. To allow persons whose lands were damaged by the "Chenango canal extension" to file claims for such damages, and to collect the same.

I suppose the claims mentioned in this bill are already barred by the statute of limitations, under the Constitution, which fixes the same limitation between the State and claimants as exists between private parties. If that be true, and the State is thus protected by the Constitution, no law can revive a claim which has been already thus barred.

A. 481. To authorize the State Board of Claims to hear and determine claims of Thomas Featherstone.

This bill authorizes the Board of Claims to "hear, audit and determine" certain claims against the State which on the face of the bill appear to have accrued no later than the year eighteen hundred and seventy-seven. It thus appearing that the claims are barred by limitation under the Constitution, the Board of Claims would be obliged to dismiss the proceedings immediately on that fact appearing.

A. 480. To authorize the State Board of Claims to hear and determine claims of Thomas J. Lawlor.

This bill is similar to the preceding one, except that the claims are in favor of a different party, and the same reasons for its rejection apply.

A. 59. To amend the charter of the Safety Fund Mutual Insurance Company.

The object of this bill is to amend the charter of a mutual insurance company formed under the general statute. The change proposed substitutes money instead of notes or obligations, which is according to the general plan. It is objected to on the ground of its being special legislation, changing the law in regard to only one corporation, and as being against the policy of the statute under which like companies are organized.

S. 477. In relation to certain fees and compensation of the sheriff of Albany county.

This bill allows a change in the fees and allowances of the present sheriff of Albany county.

This is clearly in violation of section eighteen of article three of the Constitution, which prohibits the passage of a private or local bill "*creating, increasing or decreasing fees, per centage or allowances of public officers, during the term for which said officers are elected or appointed.*"

S. —. To amend the charter of the city of Albany.

The present charter of the city of Albany provides for the designation by the common council of three official papers, which shall publish all ordinances and other matters required by law to be published.

The amendment proposed by this bill provides that if among the official papers thus designated, one of the great political parties shall not be represented, the common council may designate a fourth official paper, in order that such party may be represented.

I should like to approve a bill providing but for one official paper for the city of Albany. If two are deemed necessary, it should perhaps be provided that they shall be

papers representing the views of each of the great parties; but any bill permitting the designation of four official papers in the city of Albany appears to me to be entirely unnecessary and a useless expenditure.

S. 362. In relation to the Bethpage cemetery, in the town of Oyster Bay, Queens county.

This act seems merely to authorize the trustees of this cemetery to grant plots in the cemetery for burial purposes, and to hold and keep the money derived therefrom and apply the interest to the expense of keeping the cemetery improved and in repair, and after an accumulation of a certain sum that the principal may be applied to like purposes.

With the numerous statutes in relation to cemeteries of all kinds and descriptions, it cannot be possible that a special law is necessary in order to permit the trustees of this cemetery to do the very acts for which they were chosen or elected.

No necessity for the passage of this law has been suggested.

A. 626. Relative to the village of Newark.

The title of this bill declares it to be an act to revise and amend a certain chapter in the Laws of eighteen hundred and sixty-four, entitled "An act to amend the charter of the village of Newark," and the several acts amendatory thereof. It seems to me that this title is defective, since in the body of the bill there is no reference made to any statute as being amended, but it comprises apparently an entirely new charter for the village.

This kind of legislation comes very near being an evasion of the Constitution, which prohibits the Legislature from passing acts incorporating villages, and where acts of this kind are passed, I think they should be entitled to consolidate

or revise charters as contained in certain statutes in their title referred to.

While on account of the defective title I have not examined this bill with the utmost care, I observe one section in it which seems objectionable. It provides that any person elected or appointed to office under this act who shall refuse to qualify within five days after notice of such election or appointment, shall forfeit and pay the sum of ten dollars for the use of the village. While this would be a very proper provision in the case of any person who voluntarily assumed the duties of an office and failed to qualify, and while I would not object to some manner of compelling a better class of citizens to accept office at the hands of their neighbors by election, it seems to me the fining a person for not accepting an office to which he may be appointed, permits those having the appointing power to subject a man to the penalty without the least consultation with him.

A. 706. Amending the charter of the village of Phoenix, Oswego county.

The title of this bill is not unlike that in relation to the village of Newark; and inasmuch as it appears that the first election under this bill will not occur until the third Tuesday in March, eighteen hundred and eighty-five, no harm can ensue if its passage is postponed until the next Legislature.

A. 458. To authorize and direct the Secretary of State to compile and publish laws relating to the poor, and to distribute the same.

There is no appropriation made for this, and no limit given as to the amount to be expended. Besides this, the poor laws are so multitudinous, and there are so many local and special statutes relating to the subject that the compilation of these, together with the preparation of regulations and instructions provided for in the bill, would be a

very extensive undertaking, and to be properly done should be put in the hands of those who are specially qualified for labor of this character.

A. —. In relation to the claims of Thomas M. Costello and Charles M. Curtis.

This bill authorizes the Board of Claims to hear claims of certain parties against the State, which I understand to be now barred by the limitations prescribed by the Constitution. If this be so, the bill cannot benefit the claimants, inasmuch as when the fact appeared to the board that the constitutional limitation had attached, it would be their duty to at once dismiss the claims.

S. 200. Relative to shore inspectors.

The object of this bill is to appoint two shore inspectors to perform the duties heretofore devolving upon one such officer. The necessity of having an additional shore inspector has not been fully explained to me, and some of the provisions of the bill are so confused as to be almost unintelligible.

A. 501. Relative to the Cohoes water supply.

After a very full hearing, a little more than a year ago, I approved chapter four hundred and twenty-nine of the Laws of eighteen hundred and eighty-three. One of the principal arguments used for its passage was that the water then furnished by the Cohoes Water Company was impure. That law contemplated the furnishing of a new supply of water, etc.

Nothing has been done under that law, and it is now proposed to repeal all of it that permits new works to be erected, and authorizes putting down new pipes which will enforce the continuation of the present supply. This purports to be a bill to amend the law of eighteen hundred and eighty-three, but there are but two sections of it which

amend that law in terms. The rest is an independent act, and confusion is sure to arise, I think, between the provisions of the two acts. I think if the scheme of the act of eighteen hundred and eighty-three is to be abandoned, it should be repealed and another law substituted, or the sections of the old act should be amended in such a way that the existing law would be clear.

A. 343. Relative to mechanics' liens.

This bill repeals in distinct terms a number of mechanics' lien laws, including one specially applicable to the city of New York. I notice two features in this bill which I think objectionable enough to warrant me in declining to sign it.

1st. It gives *all parties*, having claims, four months after performance of work or furnishing of material to file a lien.

2d. It allows on proceedings to enforce the lien the same costs as in foreclosure cases. This would be quite onerous, and I think should not be allowed.

A. 549. Amending the act allowing illegitimate children to inherit real and personal property.

This bill would, I think, make a very radical and dangerous change in the law.

GROVER CLEVELAND.

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THE CIVIL SERVICE.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, June 30, 1884. }

In the exercise of the authority conferred upon the Governor by chapter 354, Laws of 1883, entitled "An act to regulate and improve the Civil Service of the State of New York," and the acts amendatory thereof,

I, Grover Cleveland, Governor of the State of New York, do hereby promulgate the following rules for the regulation of the Civil Service of the said State, and all officers and persons in the civil service of the State, and persons seeking to enter said service, will govern themselves accordingly.

Done at the Capitol in the city of Albany, this the thirtieth day of June, in the year of our Lord one thousand eight hundred and eighty-four.

GROVER CLEVELAND.

**RULE I.**

In these rules, and the regulations thereunder, the term "Commission" indicates the Civil Service Commission of the State of New York, and the terms "class," "subdivision" and "grade" are those established by the classification of the civil service of the State, approved by the Governor, September 3, 1883, and the positions now comprised in, or hereafter entered in, such classification shall, in the aggregate, be taken as the civil service of the State referred to herein, and the term "public service" shall be taken to comprehend all persons in the service of the State, without regard to such classification.

**RULE II.**

No person in the public service is, for that reason, under any obligation to contribute to any political fund or purpose, or to render any political service, and no person shall be removed or otherwise prejudiced for refusing so to do.

**RULE III.**

No person in the public service has the right to use his official authority or influence to coerce the political action of any person or body.

**RULE IV.**

For the purpose of indicating the manner in which selections shall be made for filling the positions in the civil service, when vacant, such positions shall be enrolled by class, subdivision, grade or name in some one of the five schedules,

designated respectively as A, B, C, D, and E, which schedules are hereunto annexed and form a part of these rules. The right is reserved to transfer, hereafter, any position from one schedule to another, as, from time to time, the conditions of good administration or the general interests of the public service may require, in which case, prompt publication of any such transfer will be made to all concerned.

#### RULE V.

Schedule A shall include the deputies of principal officers, duly authorized by law to act for their principals; all officers, clerks and others whose official relations are necessarily strictly confidential to the head of the office in which they serve; officers or others under official bonds as security for the collection, custody or disbursement of public moneys, or who, by virtue of their position, have the custody of public moneys for the safe-keeping of which any officer must give bonds, and such other positions as may now or hereafter be included in this schedule, according to law, and such schedule shall comprise the following positions :

#### CLASS I — SUBDIVISION II.

In the Governor's office, the private secretary, the pardon clerk and the stenographer; in the office of the Secretary of State, the deputy secretary; in the office of the Comptroller, the deputy comptroller and confidential clerk; in the office of the Treasurer, the deputy treasurer, the chief clerk, the book-keeper and the pay clerk; in the office of the Attorney-General, the two deputies and the confidential clerk; in the office of the State Engineer and Surveyor, the deputy; the deputy superintendent of public instruction; the deputy superintendent and special examiners of the Banking Department; in the Insurance Department, the deputy, the chief clerk, the actuary and the private secretary; in the Department of Public Works, the three assistant superintendents, the special agent and the financial clerk; the clerk of the Superintendent of Prisons; the clerk, deputy clerk and reporter of the Court of Appeals; the secretaries of the Railroad Commission, the Board of Health, the Board of Charities, the Commissioners

of Emigration, and the Civil Service Commission ; the chief examiner of the Civil Service ; the treasurers of asylums ; the Game and Fish Protectors, and the Superintendent of Public Buildings.

#### RULE VI.

The appointments to positions comprised in schedule A may be made without examination under these rules, but such examinations may be had upon the request of the appointing officer. Appointing officers must notify the Commission, in writing, of all appointments to such positions within five days after the same are made.

#### RULE VII.

Schedule B shall include the following :

##### CLASS I.

All clerks and other persons of whatever designation, rendering service similar to those of clerks in any branch of the State service, in the following grades :

##### SUBDIVISION I.

*First Grade.*—Clerks and like employes receiving an annual compensation of less than \$1,000.

*Second Grade.*—Clerks and like employes receiving an annual compensation of \$1,000 or more, but less than \$1,200.

*Third Grade.*—Clerks and like employes receiving an annual compensation of \$1,200 or more, but less than \$1,500.

##### CLASS III — IN SUBDIVISION III.

Office messengers and orderlies in the courts, offices and public buildings at Albany.

##### CLASS IV.

In Department of Public Works.

##### SUBDIVISION II.

Inspectors of boats and cargoes.

##### CLASS VI.

In prisons and reformatories.

## SUBDIVISION III.

*First Grade.*—Guards in prisons and reformatories.

## SUBDIVISION V.

*First Grade.*—Teachers in reformatories receiving an annual compensation of less than \$500.

## CLASS VII.

In asylums, hospitals and similar institutions, and by the Commissioners of Emigration.

## SUBDIVISION VII.

*First Grade.*—Teachers receiving an annual compensation of less than \$500.

## RULE VIII.

Appointments shall be made or employment shall be given in the positions in schedule B by selection from those persons graded highest as the results of open competitive examinations.

## RULE IX.

The competitive examinations shall be practical in their character, and with paramount regard to those matters which will fairly test the relative capacity and fitness of the persons examined for the service which they seek to enter. The examinations shall be held at such times and places as the Commission may designate, and ten days' previous notice of each examination will be mailed to all eligible applicants of record. Special regulations, in which the particular conditions (if any) of the examination will be specified, will be issued, when deemed expedient by the Commission, prior to the examinations.

## RULE X.

All regular applications for admission to such competitive examinations will be on blanks in a form prescribed by the Commission, and the applicant must state therein on oath, and in his own handwriting: 1. His full name, residence and post-office address. 2. His term of residence in this State. 3. His citizenship. 4. His date of birth. 5. His place of

birth. 6. His previous employment in the public service, if any. 7. His business or employment for the last preceding five years. 8. His education. 9. If in the military or naval service of the United States in the late war, give name of organization or vessel to which attached, date of enlistment or commission, position or rank, date and cause of discharge from the service, and any physical disability incurred in such service. 10. Such other information must be furnished as the Commission may reasonably require, touching the applicant's fitness for the public service.

The application must be accompanied (1) by a certificate of a practicing physician in good repute that he has examined the applicant and found him free from any physical defect or disease that would be likely to interfere with the proper discharge of his duties in the position in the Civil Service sought by such applicant; and (2) by the certificate of not less than three, nor more than five reputable citizens of this State, that they have been personally acquainted with the applicant for at least one year, and believe him to be of good moral character, of temperate and industrious habits and in all respects fit for the service which he wishes to enter, and that they are willing that such certificate shall be published for public information. The applicant must also state in his application the grade or subdivision in this schedule he seeks to enter, and whether he limits such application to any particular department, office or institution.

#### RULE XI.

Defective applications will be suspended and applicants notified to amend the same, but no such notice will be given or opportunity granted a second time. Whenever the application shows that the applicant is not within the prescribed limits of age, or otherwise not qualified under the rules and regulations, or is manifestly unfit for the service, the application will be rejected.

#### RULE XII.

The date of the reception of all applications shall be indorsed thereon, and entered of record by the Commission, and if the

applicants for admission to any grade or subdivision are in excess of a number that can be examined at a single examination, they will be notified to appear in their order on the respective records, provided that persons who have been honorably discharged from the military or naval service of the United States in the late war shall have precedence in such notification.

**RULE XIII.**

For the purpose of making examinations of applicants from time to time as may be required, the Commission will designate and select at Albany and other places a suitable number of persons to be members of boards of examiners, and will duly commission such persons as examiners; and the Commission may at any time substitute any other person in place of any one so selected. When persons selected as examiners are in the official service of the State, the head of the department or office in which such persons serve shall be consulted; and in the discharge of their duties as examiners the persons so selected from the official service will be responsible solely to the Commission, and will act under its regulations and direction.

**RULE XIV.**

Under the direction of the Commission the chief examiner will prepare a list of subjects of examination for the several grades and subdivisions in this schedule upon which each applicant must be examined. To such list of obligatory subjects there may be added certain other subjects in which the applicant may be examined or not at his option. The general standing of each applicant shall depend solely upon his relative proficiency in the obligatory subjects. For the purpose of determining the general average standing, certain relative weights will be given to the obligatory subjects, which weights shall be adjusted to the relative importance of the subjects.

**RULE XV.**

No person whose standing on any obligatory subject is less than fifty, or whose ascertained average standing on all the obligatory subjects is less than seventy, will be entered upon the eligible list.

## RULE XVI.

The names of the persons who have passed above the minimum, as set forth in the previous rule, will be entered upon a register in the order of their excellence, and opposite each name will be entered the standing of such person in each optional subject in which he may have been examined.

## RULE XVII.

1. Whenever any officer having the power of appointment to or employment in any grade or subdivision in this schedule shall so request, the Commission shall certify to him the names of three eligible persons who are graded highest on the proper register, indicating such of them (if any) as have been honorably discharged from the military or naval service of the United States in the late war.

2. From the three persons whose names are so certified the officer shall make a selection to fill the vacant place, subject, however, to the provisions of Rule XLIV, giving preference in appointments to certain persons.

3. Whenever such request shall indicate that proficiency in any of the specified optional subjects is of prime importance in the position to be filled the Commission may certify the names of the three persons in the eligible list having the highest standing (not being below the minimum of seventy) on such optional subject. The Commission shall have power to order a new or special examination whenever there are no persons on the eligible list sufficiently qualified in such optional subjects, or whenever an appointing officer shall apprise the Commission that any special qualifications are required for the position vacant. All positions filled by selections based on optional or special subjects will be specially noted in the published gazette of appointments, and in the official register of qualifications and schemes for examination, as being special positions in respect of such qualifications.

4. In the selection from the persons whose names are certified as above by the Commission, the appointing or employing officer, upon his written requisition therefor, will be furnished with the application and examination papers of

all the persons so certified, and in the exercise of his responsible power of selection he may summon personally before him the certified persons for such verbal inquiries as he may deem proper. All papers furnished upon requisition as above must be returned to the Commission with the notice of selection.

#### RULE XVIII.

Whenever physical qualifications are of prime importance in the proper discharge of duties in any position, applicants must pass a physical examination and be certified as qualified in such respect before record on the proper eligible list for selection for such position, or before certification by the Commission as qualified for such selection.

#### RULE XIX.

1. No person on any register shall be certified more than three times to the same officer, except upon request of such officer; nor shall any one remain eligible more than one year on any register.

2. Upon satisfactory evidence produced to the Commission that any person whose name is on any eligible list is, by reason of his character, habits or past reputation, unfit for admission to the civil service, the name of such person shall be formally stricken from such eligible list.

3. No person who has entered upon any examination for a position in schedule B or C shall be admitted, within one year from the date thereof, to a new examination for the same grade or subdivision.

#### RULE XX.

Schedule C shall include the following sections :

##### CLASS I.

Clerks in State prisons.

##### CLASS II.

All persons of special qualifications (except those employed in the Department of Public Works, the salt works, prisons, reformatories, asylums and other charitable and corrective institutions), including—Directors or curators of museums;

geologists, botanists and entomologists and their respective assistants; librarians and their assistants; civil engineers and surveyors; chemists; sanitary experts; principals, professors and teachers in normal schools; inspector of quarantine hospitals; medical superintendent of emigrants.

CLASS III — SUBDIVISION I.

Court criers and attendants; court and other marshals.

SUBDIVISION II.

Superintendents and assistant superintendents in charge of public buildings under the general superintendent.

CLASS III — SUBDIVISION I.

Superintendents of repairs.

SUBDIVISION III.

*First Grade.* — Rodmen and levelers.

*Second Grade.* — Assistant engineers below the rank of residents.

*Third Grade.* — Resident engineers.

*Fourth Grade.* — Division engineers.

CLASS V.

On the Onondaga salt works.

SUBDIVISION I.

*First Grade.* — Engineers (except the chief engineer), overseers of pumps and supervisors of aqueducts and reservoirs.

*Second Grade.* — Chief engineer.

SUBDIVISION II.

*First Grade.* — Assistant inspectors, of salt or of barrels.

CLASS VI.

In the prisons and reformatories.

SUBDIVISION I.

Wardens and agents of prisons; superintendents of reformatories.

## SUBDIVISION II.

Physicians ; chaplains ; principal matrons.

## CLASS VII.

In asylums, hospitals and under the Commissioners of Emigration.

## SUBDIVISION I.

Superintendents of insane asylums.

## SUBDIVISION II.

Superintendents of asylums other than those for the insane.

## SUBDIVISION III.

Assistant physicians and pathologists in insane asylums.

## SUBDIVISION IV.

Physicians other than those in insane asylums.

## SUBDIVISION V.

Stewards of asylums, matrons of asylums.

## RULE XXI.

The positions in schedule C may be filled by the appointing officer in his discretion in respect to the manner of examination. The discretion of the officer in such cases shall be limited as follows: (1) He may select from the three persons graded highest as the result of an open competitive examination ; or (2) he may name to the Commission three or more persons for competitive examination, and appoint the one graded highest in such examination ; or (3) he may appoint or employ any person named by him who upon a non-competitive examination shall be duly certified by the Commission as qualified to discharge the duties of the position.

## RULE XXII.

Competitive examinations for positions in schedule C will be subject to the same general provisions as prescribed in Rules VIII to XVIII, both inclusive. If the competition be an open one, the public notice thereof shall denote the special

qualifications in which competitors shall be examined. Before admission to a limited competition, the nominees must file with the Commission the certificates required by Rule VIII.

#### RULE XXIII.

1. Upon the non-competitive examination into the qualifications of a person named to the Commission for a position in this schedule, the Commission will give a certificate to such person only when satisfied :

1st. That he is within the limits of age prescribed for the position or employment to which he has been named ;

2d. That he is properly certified as free from any physical defect or disease which would be likely to interfere with the proper discharge of his duties ;

3d. That his character is such as to qualify him for such position or employment ; and

4th. That he possesses the requisite knowledge and ability to enter on the discharge of his official duties.

2. An officer, naming to the Commission a person for examination, will at the same time transmit his certificate that after due inquiry he is satisfied that the character and habits of the person named fit him for the civil service, and will append to the certificate such formal vouchers or credentials as to character as he may desire to have considered or put on file. In the determination of character or habits of the nominee, the certificate thereof by the nominating officer will be considered as essential.

#### RULE XXIV.

In determining the limits of age and the subjects and scope of the examination into the qualifications for each position as defined in the fourth clause of the preceding rule, the head of the department, office or institution where such position is to be filled, shall be consulted by the Commission, or where the position is common to several offices or institutions, the several heads thereof shall be so consulted, and the regulations finally adopted for each position shall be published in the annual reports of the Commission. Differences arising under this rule between the heads of departments, offices and institu-

tions and the Commission shall be reported to the Governor, whose decisions in such cases shall be final and conclusive.

**RULE XXV.**

Whenever a vacancy in this schedule in any department, office or institution is to be filled, the officer having the authority to fill the same shall notify the Commission which of the three methods, in his discretion, under Rule XXI he selects, and if the choice be by an open competition, the Commission shall proceed as for an examination under schedule B, but if the choice be by a limited competition or by the appointment of a person to be duly certified by the Commission as qualified, the officer aforesaid shall name in such notification the person or persons to be examined, and the Commission shall thereupon instruct the proper board of examiners, and shall notify the person or persons so named, of the time, place, and special regulations, for the examination ; and the chief examiner shall supervise the preparation of proper questions and other inquiries to test the qualifications of such person or persons.

**RULE XXVI.**

The examiners for positions in schedule C and D will be selected in the same manner, and subject to the same rules and regulations, as the examiners provided for in Rule XIII.

Regular boards of examiners may be authorized to conduct examinations of persons duly cited to appear before them for positions in any schedule. Whenever the peculiar duties devolved upon any position or class of positions may so require, special examiners will be designated and commissioned. All examiners for the civil service will promptly report to the Commission any violation of the provisions of the fifth section of the Civil Service Act.

**RULE XXVII.**

Schedule D shall include the following positions, viz.:

**CLASS III — IN SUBDIVISION III.**

Keepers and janitors of public buildings, arsenals, bureaus, etc.; watchmen, firemen, porters and Porteresses in public buildings at Albany.

## SUBDIVISION IV.

Steam engineers and all other persons engaged in expert mechanical duties in public buildings or arsenals.

## CLASS IV.

All persons employed in the department of Public Works not otherwise classified.

## SUBDIVISION IV.

*First Grade.* — All those receiving an annual compensation less than \$500.

*Second Grade.* — All those receiving an annual compensation of \$500 or more.

## CLASS V — SUBDIVISION III.

All persons employed in the Onondaga Salt Works not otherwise classified.

## CLASS IV.

In the prisons and reformatories.

## SUBDIVISION IV.

Steam engineers and others employed as expert mechanics in prisons and reformatories.

## SUBDIVISION VI.

All persons employed not otherwise classified and excepting laborers.

*First Grade.* — Such persons receiving an annual compensation of less than \$500.

*Second Grade.* — Such persons receiving an annual salary of \$500 or more.

## CLASS VII.

In asylums and other similar institutions, and by the Commissioners of Emigration.

## SUBDIVISION VI.

Engineers and expert mechanics and tradesmen.

## SUBDIVISION VIII.

*First Grade.* — Attendants, nurses and orderlies.

## SUBDIVISION IX.

All other persons employed in asylums and by the Commissioners of Emigration not otherwise classified.

*First Grade.*—All such persons receiving an annual compensation of less than \$500.

*Second Grade.*—All such persons receiving an annual compensation of \$500 or more.

## RULE XXVIII.

The positions in schedule D must be filled by such persons as upon proper non-competitive examination shall be certified as qualified to discharge the duties of such position by an examiner or examiners selected or appointed for that purpose by the Commission. The head of any office, department or institution, in which there may be a vacancy or vacancies in any position or positions in this schedule, may name for examination a person for each vacancy. The Commission may provide by special regulation that in any institution where a number of persons are employed in the same grade, the employing officer may name for examination more than one person, in order that there may be a list of qualified persons from which to make an immediate selection in case of vacancy. Such nominations may be made to the Commission or to an examiner or board of examiners as the Commission may prescribe by regulations.

## RULE XXIX.

Examinations for positions in schedule D shall be in all the four classes of qualifications defined in Rule XXIII, and their scope and details shall be determined in the manner directed in Rule XXIV. The examiner or examiners will be instructed by the Commission in general or special regulations as to the standard, scope and methods of examination, the methods of certification and the character of the records and reports to be made.

## RULE XXX.

Schedule E shall include the following positions :

## CLASS I. — SUBDIVISION I.

All clerks and other persons of whatever designation rendering services similar to those of clerks in any branch of the State service.

*Fourth Grade.* — Clerks and like employes receiving an annual compensation of \$1,500 or more, but less than \$1,800.

*Fifth Grade.* — Clerks and like employes receiving an annual compensation of \$1,800 or more, but less than \$2,000.

*Sixth Grade.* — Clerks and like employes receiving an annual compensation of \$2,000 or more, but less than \$2,500.

*Seventh Grade.* — Clerks and like employes receiving an annual compensation of \$2,500 or more.

## CLASS V.

Persons employed in the Onondaga Salt Works.

## SUBDIVISION II.

*Second Grade.* — Receivers and inspectors of salt or of barrels.

*Third Grade.* — Chief inspector of salt and chief inspector of barrels.

## CLASS VI.

Persons employed in prisons and reformatories.

## SUBDIVISION III.

*Second Grade.* — Keepers in prisons or reformatories receiving an annual compensation of \$900 or less.

*Third Grade.* — Keepers of prisons or reformatories receiving an annual compensation greater than \$900, except the principal keepers.

*Fourth Grade.* — Principal keepers.

## SUBDIVISION V.

*Second Grade.* — Teachers receiving an annual compensation of \$500 or more, but less than \$1,000.

*Third Grade.* — Teachers receiving an annual compensation of \$1,000 or more.

## CLASS VII.

Persons employed in asylums and other similar institutions, and by the Commissioners of Emigration.

## SUBDIVISION VII.

*Second Grade.* — Teachers receiving an annual compensation of \$500 or more.

## SUBDIVISION VIII.

*Second Grade.* — Supervisors of asylums and wards.

## RULE XXXI.

The positions in schedule E shall be filled, when vacant, by the promotion of those in the service in the lower grades of the same subdivision in the department, office or institution in which the vacancy or vacancies may occur. Promotions shall be made, subject to the provisions of these rules, by the officer or officers having the power of appointment. If, in the judgment of such officer or officers, there be none found in the lower grades fit to perform the duties in such vacant positions, in that case, and in no other, the positions may be filled in the same manner as is prescribed by these rules for filling the positions in the lowest grade of the same subdivision and class. Promotions shall be made by successive grades; in case of vacancy in any position in this schedule, it shall be filled by a selection from the next inferior grade, if there be any person in such grade fit for promotion, and if there be no such person, then the promotion shall be made by selection from the next inferior grade, and so on until all the inferior grades are exhausted, and no person therein found fit, when the position shall be filled by appointment as above provided.

## RULE XXXII.

Promotion will, in all cases, be based upon the positive merit of the person promoted, and upon his superior qualifications as shown by his previous service. There shall be kept in every department, office and institution proper comparative records of the efficiency, punctuality, attention and general good conduct of all persons employed therein. No person

in the service when these rules take effect can be promoted without passing an examination under the rules, of the same character as would an applicant for appointment to a similar position in the service. Examinations for promotion shall be based upon the actual work of the persons named therefor, as exhibited in the records of the office where they have been employed, and upon the certificate of their immediate official superiors that their efficiency and conduct during their past service has been in all respects satisfactory and entitles them to favorable consideration.

#### RULE XXXIII.

No recommendation of any person for promotion shall be entertained or received unless made in the regular course of duty by his immediate official superiors, and the presentation of any recommendation other than that of such superiors will be considered an unwarrantable interference with the public service, and the person so recommended may be required to show, before being certified for promotion, that such recommendation was not made by his request or connivance.

#### RULE XXXIV.

No temporary appointment or employment shall be made of any one not eligible for permanent appointment or employment, except that in the prisons, reformatories and asylums, temporary substitutes may be appointed, without examination, for not exceeding thirty days, in cases of disability by reason of sickness, or otherwise; but such temporary appointment can be made only once; and every temporary appointment under this rule must be reported to the Commission within five days, with the reason for the same.

#### RULE XXXV.

No person shall be appointed to any position in the civil service unless he is a citizen of the State and has been a resident thereof for at least one year previous to the date of his application or nomination. But this restriction shall not apply to the following positions in schedule D, to wit: The first grade of subdivision 4 of class 4; subdivision 3 of class

5; the first grade of subdivision 6 of class 6, and the first grade of subdivision 8, and first grade of subdivision 9 of class 7. Any other exceptions from such restriction made by special regulation of the Commission shall be reported by it to the Legislature, with the reasons therefor.

RULE XXXVI.

In the selection, nomination or appointment of persons to fill positions in schedules B, C and D, or promotion of persons to positions in schedule E, no regard shall be paid to the partisan political opinions, affiliation or action of any person so selected, nominated, appointed or promoted.

RULE XXXVII.

No transfer or promotion shall be made from a position in a subdivision in any schedule to a position in another subdivision in that schedule, or to one in any other schedule except by virtue of the examination and certification prescribed under these rules for admission to such last-named subdivision. Transfer without examination may be made from a position in one department, office or institution to a similar position in another department, office or institution, upon the mutual consent of the heads of the respective departments, offices or institutions.

RULE XXXVIII.

Any application for a position in the civil service, made in contravention of the provisions of the ninth or thirteenth sections of the Civil Service Act, must be rejected.

RULE XXXIX.

No question in any examination or proceeding by or under the Commission or examiners, shall call for the expression or disclosure of any partisan political opinion or affiliation of any person whatever, nor shall any discrimination be made by reason thereof; and the Commission and its examiners shall discountenance all disclosure before either of them, of such partisan opinion or affiliation by or concerning any applicants for examination, or by or concerning any person on any register awaiting appointment or employment.

## RULE XL.

Every original appointment or employment in the civil service shall be for a probationary term of three months, at the end of which time, if the conduct and capacity of the person appointed or employed shall have been found satisfactory the probationer shall be absolutely appointed or employed, but otherwise his employment shall cease.

Every officer under whom any probationer shall serve during any part of such probation shall carefully observe the quality and value of the service rendered by such probationer, and shall report in writing, to the proper appointing officer, the facts observed by him, showing the character and qualifications of such probationer and of the service performed by him ; and such reports shall be preserved on file.

## RULE XLI.

Every false statement knowingly made by any person in his application for examination, and every connivance by him at any false statement made in any certificate which may accompany his application, or any willful complicity by him in any fraud to improve his standing upon examination, shall be regarded as good cause for removal or discharge of such person during his probation.

## RULE XLII.

If for any sufficient reason it shall be impracticable to supply the names of persons who have passed a competitive examination in due season for any appointment or employment in any position in schedule B, a provisional appointment may be made of a person who has passed a non-competitive examination under the direction and regulation of the Commission ; but the next report shall give the reason for such resort to non-competitive examination.

## RULE XLIII.

1. All persons having the power of appointment to or employment in any position in the civil service must give notice in writing to the Commission of the name and place of

residence of any person selected for appointment or employment in any position, of the rejection of any such person after probation, and of the transfers, promotions, resignations and removals, discharge or death of all persons serving under them, with the dates thereof.

2. Any officer who appoints, employs or promotes a person to or in a position in the civil service, the compensation for which is paid from the State treasury, or the account for which is subject to audit by the Comptroller, shall officially notify the Comptroller of such appointment, employment or promotion before certifying or rendering any account for the services of such person. Where the payment for the services in any position in the civil service is not payable from the State treasury, nor subject to audit by the Comptroller, the notification as above of any appointment, employment or promotion to or in such position, shall be duly made to the fiscal officer empowered by law to pay the account for such services.

#### RULE XLIV.

Persons who have been honorably discharged from service in the army or navy of the United States, in the late war, shall be preferred for appointments to positions in the civil service over other persons of equal standing, as ascertained under these rules; and the person thus preferred shall not be disqualified from holding any position in the civil service on account of his age, nor by reason of any physical disability, provided such disability does not render him incompetent to perform the duties of the position applied for.

#### RULE XLV.

Subject only to the qualifications required to be ascertained in accordance with these rules, the power of appointment and the responsibility of selection are in all cases in the appointing officer. The power to remove (existing by law) on the part of any officer is not impaired by anything contained in these rules.

#### RULE XLVI.

The Commission will cause to be published at such regular periods as it may deem proper, a gazette of all appointments

promotions, resignations, removals and other changes in the civil service, and in case of appointment, may publish the names of the persons certifying the good character of the appointee.

#### RULE XLVII.

The Commission will make appropriate regulations for carrying these rules into effect, and may prescribe blank forms for all applications, certificates, records and returns required under the rules or regulations made in pursuance thereof.

### GENERAL REGULATIONS OF THE NEW YORK CIVIL SERVICE COMMISSION.

#### THE CHIEF EXAMINER.

1. The Chief Examiner shall, so far as practicable, attend the examinations held by the several boards of examiners for positions in schedules B and C.

He shall take care to secure accuracy, uniformity and justice in the proceedings of all examiners and boards of examiners under the rules and regulations, and such proceedings and all papers appertaining thereto shall at all times be open to him. He shall also from time to time inspect the proceedings and papers connected with examinations for the civil service of cities held pursuant to the eighth section of the Civil Service Act, and shall make report of such inspections to the Commission.

2. He shall prepare and submit to the Commission proper schemes for examinations, and forms for blanks and records.

He shall take care that the rules and regulations are complied with, and shall bring any case of their infraction or of injustice or irregularity observed by him to the attention of the Commission. It shall be his duty, from time to time, to confer with the heads of departments, offices and institutions in the State service, concerning the regularity, sufficiency and convenience of the examinations for the service under them. He shall perform such other appropriate duties as may be specified in these regulations, or otherwise assigned to him by the Commission.

## THE SECRETARY.

3. The Secretary shall keep the minutes of the proceedings of the Commission, and have charge of and be responsible for the safe-keeping of the books, records, papers and other property in its office. He shall make the proper certification of those eligible for appointment or employment in positions in schedules B and C. He shall generally conduct the correspondence of the Commission and perform such other appropriate duties as it may assign to him.

## THE STENOGRAPHER.

4. The stenographer shall perform such appropriate duties as may be assigned to him by the Commission, or under its direction, by the Chief Examiner and Secretary.

## EXAMINERS.

5. Regular boards of examiners will consist of three members, one of whom shall act as secretary, and two of whom may conduct an examination in the necessary absence of the third. The Secretary shall keep a complete record of the proceedings of the board and of all the examinations held by it, in such form as the Commission may prescribe.

6. The Chief Examiner shall, subject to the Commission, issue authority for holding examinations for positions in schedules B and C, and shall prepare questions and supervise other preliminary arrangements for such examinations.

7. The boards of examiners will conduct the examinations and estimate and mark the standing of the persons competing, or in a non-competitive examination shall estimate the qualifications of the person examined, and in both cases shall transmit all the papers with their report to the Commission.

8. Whenever the special qualifications required for a position are of an expert or professional character, the Commission will give to the examining board such advice and assistance from competent sources as may be expedient and available.

9. Boards of examiners for positions in schedule D shall examine such persons as are named to them in writing by any officer authorized to employ persons in the positions in that schedule, and shall only certify such as satisfy the qualifica-

tions for such positions as prescribed by the rules and regulations. They shall report to the Commission the names of persons examined by them with other pertinent information on forms furnished for that purpose, and will keep on file the minutes of their proceedings, with all papers connected therewith, which shall at all times be subject to the inspection of the Commission and its agents.

10. Special boards will be selected and special regulations for examinations will be issued by the Commission in such cases as it may deem expedient.

11. No examiner or person serving under the Commission must attempt to influence the selection, nomination or appointment of any person for the civil service.

12. Care must be taken by examiners to preserve order and decorum at examinations and to prevent such visitors as they may admit, by conversation or otherwise, to obstruct or distract those being examined.

13. Examiners must not disclose for public information, unless by consent of those examined, more than the general results of examinations, without the details of answers given.

14. Any person, after receiving official notification of his standing as ascertained by a competitive examination, may in person, or by duly authorized agent, inspect in the presence of the Chief Examiner or the Secretary of the Commission, his examination papers and the markings thereon.

15. Complaints which show any injustice or unfairness on the part of any examiner or examining board, or by any one acting under the Commission, will be considered by the Commission, which reserves the right to revise the marking and grading on the papers, or order a new examination, or otherwise act as substantial justice in the premises may require.

16. For the purposes of examinations, examiners are authorized by the last clause of the third section of the Civil Service Act, to request the use of suitable rooms in public buildings and the lighting and the heating of the same. In all cases the requisition for such accommodation should be in writing, reciting the provision of law above referred to and denoting the amount of room required, and should be addressed to the

State, county, city, town or village officer having custody of the public building. School rooms are generally those best adapted for examinations.

17. Accounts of examiners (who are not otherwise in the civil service) for services and for reimbursement for necessary expenditures, should be rendered in the forms prescribed and sent to the Commission for approval before payment.

#### APPLICATIONS FOR POSITIONS.

18. Applications for admission to competitive examinations for positions in schedule B will be directed to the "Civil Service Commission, Albany, N. Y." Blank forms for such applications and for the requisite certificates will be furnished upon request, which should specify the position in the service sought by the applicant. All applications for positions in schedules A, C and D must be made to the head of the department, office or institution wherein the position is sought.

19. The Commission cannot advise persons as to vacancies in the service, nor furnish any information as to the duties, salaries, course of promotion, or other conditions of positions, except such as may be found in printed regulations. No advice can be given as to the course of preparation that applicants should follow, nor can specimens of the examination papers be furnished.

20. All application papers and accompanying certificates will remain on file in the office of the Commission, and under no circumstances or conditions will the originals be returned to the applicant.

#### EXAMINATIONS.

##### 1. COMPETITIVE.

21. Applicants will be admitted to examination upon the production of the official notification to appear for that purpose. Each applicant will receive a number, which will be indorsed upon his notification when produced, and the notifications so indorsed shall be sealed in an envelope; each applicant will sign his examination papers with his number, omitting his name, and the envelope shall not be opened until

all the examination papers have been received and the markings and gradings made.

22. All examinations shall be in writing, except such as refer to physical qualities, or expertness.

23. The sheets of questions will be numbered and will be given out in the order of their numbers, each after the first being given only when the competitor has returned to the examiners the last sheet given to him. In general, no examination shall extend beyond five hours without intermission ; and no questions given out at any session, to any candidate, can be allowed to be answered at another session. Each applicant must complete his examination on the obligatory subjects, before taking up any of the optional subjects.

24. Each examiner will exercise all due diligence to secure fairness and prevent all collusion and fraud in the examinations.

25. The time allowed for completing the examination will be announced before the first paper is given out. For the obligatory subjects the examination should be confined to a single day, but the examiners may extend such time in special cases of emergency.

#### MARKING.

26. The examination papers shall be reviewed by each examiner separately, and, in any case of disagreement, the average of the markings made on any question or paper by all shall be the final marking on such question or paper, subject to the regulation as to revision.

27. The papers of all the competitors in each subject should be examined, compared and marked before the papers in another subject are taken up.

28. The marking of each question or subject shall be made on a scale of 100, which maximum shall represent accuracy or the highest possible attainment; and 0 shall represent absolute ignorance. Handwriting will be judged by its legibility, uniform and correct formation of letters and ease of execution. Upon a comparison of the handwriting of all the competitors, the best and worst should be first agreed upon, and the two extremes of the scale thus fixed; the others should be marked relatively to them. In writing from dicta-

tion or copying from manuscript, the omission, repetition or substitution of words, the erasures, blots and other evidences of carelessness will, proportionately to their numbers, reduce the marking below 100. Spelling will be marked with reference to the ratio the misspelt words bear to the whole number of words dictated. Making abstracts or summaries of documents, and letter-writing will be marked as in handwriting, by agreeing upon the best and worst examples, and having marked them, then proportionately marking the others.

In each of the other subjects, each question shall be marked on the scale of 100, and the sum of such markings divided by the number of questions in that subject shall be the competitor's standing on such subject.

#### GRADING.

29. The absolute or average general standing of each competitor will then be made up in form as follows, in accordance with the respective weight accorded to each subject by the regulations, thus :

#### *Examination of . . . . .*

SUBJECTS.	Weight given to subject.	Standing on subjects.	Product of weight and standing.
1. Writing from dictation . . . . .	2	80	160
2. Handwriting . . . . .	3	75	225
3. Spelling . . . . .	1	78	78
4. Arithmetic . . . . .	2	92	184
5. Reporting in writing from memory . . . . .	2	88	176
Total product . . . . .	....	....	823
Divide by sum of weights or . . . . .	10	....	....
General average standing.	....	....	82.3

*Or Examination of . . . . .*

SUBJECTS.	Weight given to subject.	Standing on subjects.	Product of weight and standing.
1. Writing from dictation . . . . .	3	96	288
2. Copying from manuscript. . . . .	2	97	194
3. Handwriting . . . . .	4	85	340
4. Spelling. . . . .	3	88	264
5. Arithmetic . . . . .	4	93	372
6. Geography and history . . . . .	1	80	80
7. Constitutional questions. . . . .	1	63	63
8. Making a summary . . . . .	2	72	144
Total product . . . . .	....	....	1,745
Divide by sum of weights or . . . . .	20 .	....	....
General average standing. . . . .	....	....	87.25
OPTIONAL SUBJECTS.			
Book-keeping. . . . .	....	....	80
Stenography. . . . .	....	....	92

It will be observed that the standing on each subject is multiplied by the weight given that subject and the product placed in the third column, and the sum of these products divided by the sum of the weights gives the general average standing.

If, in the marking, it is found that the standing of a competitor on any subject falls below fifty, the further marking of the papers of such competitor may be dropped (Rule XV), and such fact recorded on the face of the paper in red ink.

30. The grading of the several competitors being completed, their names will be enrolled in the order of their excellence, as determined by such examination, upon a register of eligible persons in form as prescribed by the Commission.

31. Every paper in any examination not formally certified by the examiners will be signed with his initials in ink by each examiner who has reviewed and marked it.

32. Priority of date in examination will give no advantage in position on the eligible list. The names of the three per-

sons highest in general average standing on the lists for any grade will be certified for selection without regard to dates of examination, and subject only to the preferences of competitors on record for certain departments or offices, or to the certificate of the appointing officer, that an optional subject is of prime importance.

NON-COMPETITIVE.

33. *Schedule C.*—The boards of examiners before whom shall appear any person named for a position in schedule C, subject to a non-competitive examination, will report to the Commission the facts regarding such person furnished to or ascertained by them upon the first three points as required by Rule XXIII. Upon the fourth point as required in said rule, they will examine the person so appearing in the several subjects prescribed by regulations in accordance with Rule XXIV. Such examination will be in writing and the standing on each subject will be marked in the manner herein directed for competitive examinations.

The grading of such person, together with the examination papers and the report on the other points of inquiry, shall be transmitted to the Commission, as soon after the examination as practicable.

34. *Schedule D.*—The boards of examiners for positions in Schedule D shall take evidence of the qualifications of persons properly appearing before them, as the same are defined in Rule XXIX, and regulations pursuant thereto. So far as may be practicable, such examinations shall be in writing. If the board is satisfied that any person so appearing is duly qualified to discharge the duties of the position for which named, a certificate of qualification will be granted by the board in such form as the Commission may prescribe. Officers having the authority to employ persons in the positions included in Schedule D may directly name persons to any such board for examination. Quarterly reports on the first days of January, April, July and October in every year will be made by such boards to the Commission, giving names of all persons examined, the positions for which named, and whether or not

certified as qualified. Intermediate reports of a similar nature will be made when specially required.

#### FOR PROMOTION.

35. Examiners will carefully inspect the work performed during the previous year by the persons named for promotion as regards its accuracy and neatness, and should personally question them concerning their office work and its purposes, in order to ascertain if they have a general and intelligent knowledge of the business in the department where they are employed. No part of the examination need be by written answers to written questions, but the examiners may require the persons examined to give a written description of the work done by them and its relation to the duties of others.

#### GENERAL.

36. As soon as practicable after an examination the papers of the candidates will be marked, and their standings ascertained and communicated to them by the Secretary of the Commission by mail. Prior to that time no inquiries addressed either to the examiners or the Commission will be answered. No letters explanatory of errors presumed to have been made in an examination will receive any attention.

37. The Commission cannot undertake to answer inquiries relating to cases which are not officially before it for decision, nor can it decide, except in cases of actual candidates on its registers, questions respecting the application of the rules and regulations.

38. Particular answers cannot be given to inquiries which are answered expressly or by implication in published regulations and similar documents.

39. The schemes of qualifications and subjects of examination of the same for positions in schedules C and D will be published from time to time for general information.

In regard to many of such positions, the nature and extent of such examinations will not be determined until after a vacancy in the position occurs.

No information can, therefore, be given in regard to such positions other than is published as above mentioned.

[See supplemental rules approved November 18th and May 30th.]

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IN THE MATTER OF ORRIN SPERRY, TREASURER  
OF THE COUNTY OF CHAUTAUQUA.

NOTICE OF CHARGES PREFERRED.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, July 2, 1884.

To ORRIN SPERRY, *County Treasurer of Chautauqua County*:

You are hereby notified that charges have been preferred against you, by which you are accused of neglect of duty and malfeasance in office, and that a copy of said charges is herewith served on you.

You are hereby required to answer said charges and file said answer with the Governor at the Executive Chamber, in the city of Albany, within ten days after the service of this notice and the accompanying copy of said charges upon you.

GROVER CLEVELAND,  
*Governor.*

ORDER APPOINTING LORENZO MORRIS COMMISSIONER TO  
TAKE TESTIMONY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER.

*In the Matter of the Charges preferred against Orrin Sperry,  
County Treasurer of Chautauqua County.*

Charges having been preferred against Orrin Sperry, county treasurer of the county of Chautauqua, and said

charges and a notice requiring him to answer the same within ten days after service thereof upon him, having been served upon the said Sperry on the 4th day of July, 1884, by leaving the same at his place of residence, with some person of suitable age and discretion, pursuant to the statute in such case made and provided, and the said Sperry not having been found, and having absconded from the State of New York, and no answer having been made by the said Sperry to said charges, I do hereby appoint Lorenzo Morris, of the village of Fredonia, commissioner to take the testimony and the examination of witnesses as to the truth of said charges. I hereby direct the Attorney General to conduct the inquiry and examination before the said commissioner, first giving to the said Sperry four days' notice of the time and place of such examination, to be served personally upon said Sperry if he can be found within the State, or if not so found, by leaving the same at his residence, with some person of suitable age and discretion.

Given under my hand and the privy seal of the State, at the Capitol in the city of Albany, this [L. S.] fifteenth day of July in the year of our Lord one thousand eight hundred and eighty-four.

GROVER CLEVELAND.

By the Governor:

DANIEL S. LAMONT,

*Private Secretary.*

ORDER OF REMOVAL FROM OFFICE.

STATE OF NEW YORK, }  
EXECUTIVE CHAMBER. }

*In the Matter of the Charges preferred against Orrin Sperry,  
County Treasurer of the County of Chautauqua.*

Charges of malfeasance and malversation in office against Orrin Sperry having been made and presented to me by a committee of the board of supervisors of the county of Chautauqua, and a copy of said charges having been served upon said Sperry by leaving the same with his wife, at his residence, his present whereabouts being unknown, and testimony having been duly taken in support of such charges by Lorenzo Morris, Esq., the commissioner appointed by me for such purpose;

*Now, therefore,* on reading such charges and testimony so taken thereupon, I do hereby find and determine that the charges so made and filed are true; and

I do hereby order, upon such determination, that the said Orrin Sperry, for the cause aforesaid, be, and he hereby is, removed from the office of treasurer of the county of Chautauqua.

Given under my hand and the privy seal of the State,  
at the Capitol in the city of Albany, this eleventh  
[L. S.] day of August in the year of our Lord one  
thousand eight hundred and eighty-four.

GROVER CLEVELAND.

DANIEL S. LAMONT,  
*Private Secretary.*

IN THE MATTER OF ALEXANDER V. DAVIDSON,  
SHERIFF OF NEW YORK.

NOTICE OF CHARGES AND SUMMONS.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, September 26, 1884. }

To ALEXANDER V. DAVIDSON, *Sheriff of the City and County of New York:*

You are hereby notified that charges have been preferred against you for malversation in office and neglect of duty in office.

You are required to answer said charges, a copy of which is herewith served on you, and file said answer in this office within twenty days after the service hereof.

GROVER CLEVELAND.

*Governor.*

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LETTER TO ANTHONY COMSTOCK.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, October 13, 1884. }

ANTHONY COMSTOCK, Esq., *Secretary, etc.:*

DEAR SIR.—I have carefully examined the papers sent to me in September last, relating to gambling in the county of Kings, and also your letter of October tenth and the correspondence with James W. Ridgway, District Attorney of said county.

I presume, from a perusal of these documents, that they were intended to present charges against Mr. Ridgway for

neglect of duty, though so many other matters and things are treated of in the papers that the purpose above specified is not clearly apparent. If it is intended to present to me charges against the district attorney, or any other officer whom I have the power to remove, they should be formulated in a proper manner, alleging that the officer has been guilty of neglect of duty or, in general terms, of some other malfeasance or misfeasance.

The charge or charges should be followed by specifications, these to be numbered, and to contain the points wherein the officer is claimed to be guilty.

This is necessary in order that the party complained of may know precisely what he is called upon to meet, so that he may answer the same, and so that the examination may be properly confined and directed to the matters really in issue.

The charges and specifications should be verified by the party making the same.

I have also required, in the cases which I have heretofore examined, affidavits setting forth in a general way the facts and the proof upon which the complaint is founded, or a reference to so much of the same as will tend to satisfy me that the evidence is at hand to establish the charges.

You will see, I think, at a glance, how far the papers you have presented to me fall short of these reasonable requirements, and how unfair it would be to serve them upon an accused official and require him to answer the same.

If it is your purpose to charge District-Attorney Ridgway with neglect of duty, I am prepared to examine and act upon such charges when properly presented.

Yours, etc.,

GROVER CLEVELAND.

THE CIVIL SERVICE — PROVISIONAL RULE CONCERNING LABOR INSTRUCTORS IN STATE PRISONS.

STATE OF NEW YORK.

OFFICE OF THE CIVIL SERVICE COMMISSIONERS. }

*Provisional Rule concerning the Employment of Persons required in the management of Convict Labor on State account in the Prisons of the State.*

In case the Superintendent of Prisons shall determine to employ convicts in the State prisons at any skilled labor upon State account, and shall require persons in the management of such labor in addition to the regular prison officials, all such persons shall be classed in schedule C, and shall be examined before appointment by a board of examiners for each of the prisons, to consist of the agent and warden and two citizens not officially connected with the prisons. But this provisional rule shall cease whenever a permanent system of prison labor shall be established by lawful authority.

Approved *October 14, 1884.*

GROVER CLEVELAND,

*Governor.*

IN THE MATTER OF ALEXANDER V. DAVIDSON,  
SHERIFF OF THE COUNTY OF NEW YORK.

EXTENSION OF TIME IN WHICH TO ANSWER CHARGES.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, October 17, 1884.

*In the Matter of the Charges against Alexander V. Davidson,  
Sheriff of the County of New York.*

Counsel for Alexander V. Davidson, sheriff, having represented to me that owing to other and previous professional engagements, they have not had an opportunity to formulate a paper to be presented to me in the above entitled matter, and that their time so to do expires on the seventeenth instant, and having requested of me an extension of the time within which to present such paper, I do hereby, in consideration of the premises, extend the time to present such paper ten days from this date.

GROVER CLEVELAND.

*Governor.*

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THANKSGIVING PROCLAMATION.

STATE OF NEW YORK.

PROCLAMATION

BY GROVER CLEVELAND, GOVERNOR.

The People of the State of New York should permit neither their ordinary occupations and cares, nor any unusual cause of excitement, to divert their minds from a sober and humble acknowledgment of their dependence upon Almighty God for all that contributes to their happiness.

ness and contentment, and for all that secures greatness and prosperity to our proud commonwealth.

In accordance with a long-continued custom, I hereby appoint and designate Thursday, the 27th day of November, 1884, to be specially observed as a day of thanksgiving and praise. Let all the people of the State, at that time, forego their usual business and employments, and in their several places of worship, give thanks to Almighty God for all that He has done for them. Let the cheer of family reunions be hallowed by a tender remembrance of the love and watchful care of our Heavenly Father; and in the social gatherings of friends and neighbors, let hearty good-will and fellowship be chastened by a confession of the kindness and mercy of God.

Done at the Capitol, in the city of Albany, this eighth day of November, in the year of our [L. S.] Lord, one thousand eight hundred and eighty-four.

GROVER CLEVELAND.

By the Governor:

DANIEL S. LAMONT,

*Private Secretary.*

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#### THE CIVIL SERVICE—AMENDED CLASSIFICATION.

STATE OF NEW YORK. }  
OFFICE OF CIVIL SERVICE COMMISSION. }

At a meeting of the Civil Service Commission held November 10, 1884, it was

*Resolved*, That the following named positions be changed from schedule C to schedule B of the State classification:

Civil engineers and surveyors, chemists, superintendents

and assistant superintendents in charge of public buildings under the general superintendent, physicians in prisons, assistant physicians and pathologists in insane asylums, physicians other than in insane asylums, rodmen and levelers, assistant engineers below the rank of residents.

*Resolved*, That the following be transferred from schedule D to schedule B:

All steam engineers.

Approved *November 18, 1884.*

GROVER CLEVELAND,

*Governor.*

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STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, November 28, 1884. }

*In the Matter of the Charges against Alexander V. Davidson, Sheriff of the County of New York.*

A copy of the charges in this proceeding having been heretofore served upon the said Alexander V. Davidson, and he having been required to answer the same, and the said Davidson having thereupon filed in writing a notice of a motion to dismiss the said charges upon the grounds in the said notice specified;

I do hereby appoint the fourth day of December, 1884, at half-past twelve o'clock in the afternoon, and the Executive Chamber in the city of Albany, as the time and place for the hearing of said motion.

[L. S.]

GROVER CLEVELAND.

To AARON J. VANDERPOEL, Esq., and JOHN E. DEVLIN, Esq.,  
*of Counsel for Respondent, and*  
CHARLES P. MILLER, Esq., *of Counsel for Committee.*

NOTE.—Upon request of counsel for Davidson, the hearing was subsequently postponed to December 11, 1884.

## IN THE MATTER OF PATRICK W. NORTON.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, December 9, 1884. }

His Excellency ROBERT E. PATTISON, *Governor of the State of Pennsylvania*:

SIR.—A state of facts has been presented to me this day, which is fully set out in the documents herewith submitted, numbered one and two respectively.

I send them to you because in a similar case, recorded in the sixth of Harris' Pennsylvania State Reports, Dow's case, page 39, the court say:

"Had the prisoner's release been demanded by the executive of Michigan, we would have been bound to set him at large."

And for the further reason that the judge before whom the *habeas corpus* proceedings were instituted in behalf of Norton, the prisoner, who makes the inclosed petition to me, seems to have placed his refusal to release him largely upon the ground that no demand had been made for such release by the executive of the State from which he was outrageously kidnapped. (See page 33 of Document No. 2.)

In calling your attention to the papers herewith transmitted, I desire to supplement them with the request, based upon the legal opinions before referred to, that, if consistent with your ideas of justice and executive power, you cause the release of the prisoner.

Yours very respectfully,

GROVER CLEVELAND.

LETTER FROM GOVERNOR PATTISON TO GOVERNOR CLEVELAND.

COMMONWEALTH OF PENNSYLVANIA.

EXECUTIVE DEPARTMENT,

OFFICE OF THE GOVERNOR, HARRISBURG, Dec. 22, 1884. }

To His Excellency GROVER CLEVELAND, *Governor of the State of New York*:

SIR.—I have this day addressed a letter to the Hon. David L. Krebs, president judge of the Forty-sixth Judicial District of this State, asking the release of Patrick W. Norton, in response to the request conveyed in your letter of the ninth instant.

I herewith inclose a copy of the same to you.

Yours respectfully,

ROBERT E. PATTISON.

LETTER FROM GOVERNOR PATTISON TO JUDGE KREBS.

COMMONWEALTH OF PENNSYLVANIA.

EXECUTIVE DEPARTMENT,

OFFICE OF THE GOVERNOR, HARRISBURG, Dec. 22, 1884. }

To the Hon. DAVID L. KREBS, *President Judge of the Forty-sixth Judicial District of Pennsylvania*:

SIR.—A communication from His Excellency Grover Cleveland, Governor of the State of New York, bearing date the ninth instant, has been received by me requesting the release of one Patrick W. Norton, a prisoner now confined in the jail of the county of Clearfield, in this commonwealth.

I herewith submit a copy of the same to you, together with the papers which accompanied it, disclosing the grounds upon which the request was based. There is no material dispute about the facts of the case. Patrick W. Norton, a citizen of the State of New York, temporarily sojourning in Canada, was decoyed into the State of New

York by means of a false and forged telegram, and there arrested upon a warrant sued out in said State, which directed him to be taken before a magistrate in Cattaraugus county in said State. He was not taken before that or any other magistrate upon that warrant, but was carried forcibly, and against his will, into this commonwealth, where another warrant, sued out in this commonwealth, was served upon him, under which he is now detained in the county of Clearfield. These illegal proceedings were had with a full knowledge on the part of the instigators of, and participants in the arrest; that they were illegal, because, prior thereto, a requisition upon His Excellency the Governor of the State of New York for the arrest and delivery of Patrick W. Norton had been applied for to me, and by me refused. No warrant had been granted to anybody by anybody to convey him from the State of New York into the commonwealth of Pennsylvania, and Patrick W. Norton, who was the only person who could waive the forms of law for this purpose, not only refused to do so, but protested against, and vigorously resisted, the attempt to convey him out of the State of New York. His Excellency the Governor of the State of New York has justly characterized it as a case of outrageous kidnapping. There is no power vested in me as Governor of this commonwealth to order the discharge of this prisoner, and I do not apprehend that His Excellency the Governor of the State of New York so thought. He has simply chosen the executive department of this commonwealth as the channel through which to communicate with the court of the district in which the prisoner is detained. In Dow's case (6 *Harris*, 37), Chief Justice Gibson said :

“Had the prisoner's release been demanded by the executive of Michigan, we would have been bound to set him at large.”

Thus asserting the authority of the judiciary to act in such a case, as well as the fact that the demand of the executive would have been sufficient to cause the prisoner's discharge.

At the hearing before you, looking to the discharge of this

prisoner, had before the receipt by me of the communication from the Governor of the State of New York, you, doubtless, having this case in mind, remarked: "There is no offer to show that the Governor of New York is here demanding the custody of one of his citizens, and, in the absence of that, we think we will hold him, etc."

The Governor of the State of New York now makes the request for the release of Patrick W. Norton. The power lies with you to right the wrong done to the State of New York in depriving one of its citizens of his liberty without due process of law.

I do, therefore, most respectfully and earnestly request that you cause the release of the prisoner, Patrick W. Norton.

Yours, very respectfully,

ROBERT E. PATTISON.

LETTER FROM JUDGE KREBS TO GOVERNOR CLEVELAND.

CLEARFIELD, PA., 24th December, 1884.

To His Excellency, Hon. GROVER CLEVELAND, *Governor of the State of New York:*

MY DEAR SIR.—I have the honor to receive from the Hon. Robert E. Pattison a copy of your request for the release of Patrick W. Norton, under date of the ninth instant, also his communication to myself, under date of the twenty-second instant, requesting that I order the release of the prisoner now confined in the jail of this (Clearfield) county. In order that this grave and important question of comity between the States, and particularly its effect upon the future administration of the law when criminals flee from justice, may be deliberately considered and settled, I have fixed the thirtieth December, instant, at ten o'clock, A. M., for the hearing of argument for and against the release of Norton, and have so notified Governor Pattison and the counsel for the prisoner and the prosecution. In thus delaying the consideration of the question, and the discharge of Patrick W. Norton, I do it out of no disrespect to yourself, but because pressing official

duties, and the importance of the question involved, will not permit more hasty disposition thereof. If you shall desire, through your legal adviser, to be heard, I shall most gladly postpone the hearing to such time as will suit. In the meantime I beg to assure you that the rights of the prisoner will be fully and completely guarded, and that no wrong will be done him.

I have the honor to subscribe myself, very respectfully,

Your obedient servant,

DAVID L. KREBS.

LETTER FROM GOVERNOR CLEVELAND TO JUDGE KREBS.

STATE OF NEW YORK.

*EXECUTIVE CHAMBER,*

*ALBANY, December 26, 1884.* }

SIR.—I have the honor to acknowledge the receipt of your communication of the twenty-fourth instant, in the matter of the application for the release of Patrick W. Norton.

The Governor desires me to convey to you his thanks for your courtesy in the matter, and to say that he feels assured the rights of the State of New York will be fully protected at your hands without it being represented by counsel.

He will be pleased, however, at your convenience, to receive a copy of your decision in the matter.

I am, sir, with great respect,

DANIEL S. LAMONT,

*Private Secretary.*

To the Honorable DAVID L. KREBS, *President Judge, Forty-sixth Judicial District, Clearfield, Pa.*

OPINION AND DECISION OF JUDGE KREBS.

On the second day of January, 1886, the following opinion in this matter was filed by Judge Krebs:

*In re Commonwealth, ex relatio Patrick W. Norton, v. R. N. Shaw, Sheriff.*

In the Common Pleas Court of the County of Clearfield, Penn. No. , February Term, 1885.

STATEMENT OF FACTS.

Patrick W. Norton became a naturalized citizen of the United States on or about the year 1864, in the State of New Jersey, and subsequent thereto, for about a period of about seven years, resided in, and having a domicil in the city of New York, and again having his domicile in the county of Cattaraugus in the State of New York, until about the 1st of June, 1883. On or about the 1st of June 1883, he and James Welch, a brother-in-law, came to the State of Pennsylvania and took a contract of grading a portion of the Beech Creek, Clearfield and South-Western Railroad, then in the course of construction in the counties of Clinton and Centre, in said State, and subsequently took another contract for grading three miles of the same road from George H. Thompson & Co., who were contractors under General McGee, who had the general contract for the building of said railroad. These last three miles being between the towns of Bigler and Woodland, in the county of Clearfield, Penn. On the 24th day of September, A. D. 1884, he, in company with Welch, his associate in said contract, met Henry M. Ellsworth and Henry H. Kelsey, who were members of the firm of Thompson & Co., at Bigler, and then received from Thompson & Co. the sum of \$6,361.01 in currency, and a check of \$1,000 which they alleged they wanted in order to pay that amount to the firm of R. B. Wigton & Co., with whom they had been dealing. On the same day Welch and Norton left the county, going in different directions, and without paying the amounts then due and owing the laborers in their employ, which amount, according to their own declarations, exceeded six

thousand dollars. On the 24th of September, 1884, information was made before a justice of the peace in and for the county of Clearfield, Penn., against said Welch and Norton, charging them with the crimes of larceny, embezzlement, and conspiring to cheat their creditors. On the      day of October, 1884, an application was made on behalf of the prosecution to Governor Pattison of the State of Pennsylvania, for a requisition to be directed to the Governor of the State of New York for the extradition and return of Norton and Welch as fugitives from justice, to the jurisdiction of the court of Clearfield county. This application was heard and a requisition was refused. On the      day of October, 1884, an information was made before a magistrate of the county of Cattaraugus, in the State of New York, upon which Norton was arrested, but he escaped from the officer and fled to St. Catherines, in the Province of Canada, where he registered under the name of William Jones. On the      day of October, 1884, one Dennis O'Connell telegraphed to Norton, at St. Catherines, in the name of Mrs. Norton, that she was dangerously sick, and asking him to come at once. When he arrived at Buffalo, in the State of New York, he was arrested by O'Connell upon an alleged warrant issued by a magistrate of the city of Olean, in the county of Cattaraugus, but was taken by O'Connell, against his will and without his consent, to the city of Erie, in the State of Pennsylvania, where he was delivered to an officer and by him taken before D. Connolly, Esq., a committing magistrate in for and the county of Clearfield, and in default of bail committed to the county jail. On the 14th day of November, 1884, a writ of *habeas corpus* was sued out and a hearing had before the judge of the Court of Common Pleas of the county of Clearfield, and after hearing had, in which it was offered on behalf of the relator Norton to prove the manner of his arrest and detention, which offer was overruled on the ground that a fugitive from justice cannot on his own demand be set free, because he was arrested in an illegal manner, and because the Governor of New York did not demand his release, he was remanded to the custody of the sheriff of the county, in default

of bail, to answer to the charge of conspiring to cheat and defraud his creditors. On the 8th day of December, 1884, the matter was laid before His Excellency the Governor of New York, on the petition of Norton, who, on the 9th day of December, 1884, addressed the following communication to His Excellency the Governor of Pennsylvania:

(Here follow the request made by Governor Cleveland to Governor Pattison, and the request made by Governor Pattison to Judge Krebs for the release of the prisoner.)

Upon the receipt of this communication from the Governor of Pennsylvania, accompanied with a copy of that from the Governor of New York, addressed to the Governor of Pennsylvania, it was ordered that a writ of *habeas corpus* should issue in the name of the Commonwealth *ex relatio* Norton *versus* R. N. Shaw, high sheriff of Clearfield county, Pa., requiring him to produce the body of the said Norton before the court on the 31st December, 1884, in order that the two questions of fact involved in the demand of the Governor of New York, for the release of Norton, might be investigated, to wit, the citizenship and the illegal arrest or kidnapping, as it was denominated. At this hearing the proof established the facts upon these two questions as hereinbefore stated, and also that on the      day of December, 1884, the grand jury of the county had returned a bill of indictment against Norton for conspiracy to cheat and defraud his creditors. Upon the return of the writ it was contended that the prisoner should be discharged because his arrest was an indignity to the sovereignty of the State of New York, and that under the comity which ought to exist between sovereign States this wrong should be repaired by his discharge.

On the part of the prosecution it was contended that in the absence of legislation by the federal government, in which the right to demand Norton's release was given to the executive of the State of New York, the right to demand him did not exist; and that no comity between States or independent sovereignties existed which required the release of one under indictment for a violation of the laws of the State or sovereignty by which he was held, upon the demand of the chief

executive of the State or sovereignty from which he had been abducted.

#### CONCLUSIONS OF LAW.

The questions involved in the determination of this case are new. They are so important in their results as to require the best consideration that we can give them. It is with no desire to magnify the power of the courts of this district that we say that the power to release the prisoner, Patrick W. Norton, and to set him at large, is wholly vested therein. Under the Constitution of Pennsylvania, the judiciary is a co-ordinate branch of the government with the executive, and in the sphere of its duties independent of the executive. Charged with the performance of specific duties relating to the administration of the law, and as affecting the lives, liberty and property of the citizens of the commonwealth, it may not be interfered with by the executive department, except so far as the executive may, by the use of the pardoning power vested in him, relieve the person from the penalties imposed by the judgments and decree of the courts. And this power thus vested in the State courts, within their respective territorial limits, is independent of the judicial power of the courts of the federal government, except as to the determination of questions arising immediately under the laws, and the execution thereof by the authorities and officers of the United States. (Robb v. Connelly, 111 U. S. Rep., p. 639.)

The question before us is not one of extradition under that part of article four, section two of the Constitution of the United States, which provides that "A person charged in any State with treason, felony or other crime, who shall flee from justice and be found in another State, etc.,," for while it cannot be doubted that the prisoner was a fugitive from justice, having fled from Pennsylvania to New York, it is not the Governor of Pennsylvania that asks for his return, so that he may be tried for a violation of the law of Pennsylvania, but it is the Governor of the asylum State that demands his release.

The question is, therefore, one of comity between the State of New York and the State of Pennsylvania. Every sovereign State is independent of every other in the exercise of its

judicial power, and one of the purposes of this judicial power is to punish all offenses against the municipal laws of the State, by whomsoever committed within its territory. This independence and sovereignty of the several States exists as truly as does the independence and sovereignty of the United States from that of a foreign State or sovereignty, subject only to the powers expressly conferred by the States upon the general government. It follows from this that there is no rightful authority or power on the part of one State to invade the territory of another State, for any purpose whatsoever, except it be given by the Constitution of the United States. And the power to extradite fugitives from justice from one State to another is expressly given by the fourth article, section two, Constitution of the United States ; and the mode regulated by the act of Congress of the 12th February, 1793. But the facts in this case show that the prisoner was not brought within our jurisdiction, in pursuance of the mode thus regulated by law.

That the manner of his arrest and the means employed to bring him out of the State of New York and within the State of Pennsylvania constitutes the crime of kidnapping at common law will not be denied. And that it was in express violation of the statutes of the State of New York punishing the crime of kidnapping (*vide* Penal Code, R. S. of New York, sect. 211) will not be disputed. That it would be so held and construed by the courts of that State under the statute, cannot be doubted, since the decision in the case of *Hadden v. the People* (25 N. Y. Reports, 373). If the power to surrender the prisoner was vested in the executive of the State, and he refused to deliver him, no legal power exists anywhere to compel him to do so, even if he were a fugitive from justice. (*Commonwealth of Kentucky v. Dennison*, 24 Howard [U. S. R.], 66.) And the same, we claim, is true if we should refuse to release the prisoner upon the demand of the Executive Department of the State of New York. No power but that of force and war could compel his release. This, therefore, brings us to face the importance of the question, shall this prisoner who stands indicted for a violation of law within our

jurisdiction, be set at large only from considerations of utility and mutual convenience of the State of New York and Pennsylvania, *ex comitate, ob reciprocum utilitatem.* We are not wholly without precedent, however. In Dow's case (6 Harris, 37), Chief Justice Gibson, a greater judge than whom never lived, said : "Had the prisoner's release been demanded by the Executive of Michigan, we would have been bound to set him at large." It was not shown nor alleged in that case that any law of Michigan had been violated; indeed it may be a question whether the prisoner, Dow, was within the territorial jurisdiction of the State of Michigan when taken. But in this case the statutes of the State of New York have been violated, aside from the invasion of the territory. Shall it be said, then, that a court sitting to administer and vindicate the law in this case, shall close its eyes to the violation of the law by which the prisoner is brought within its jurisdiction ? That the ends to be accomplished justify the means employed cannot and ought not to become a maxim of legal jurisprudence. To deny this demand for the release of this prisoner, would be to encourage the violation of that comity which does now, and ought always, to exist between adjoining States in this government. It would be, in our judgment, a precedent full of evil consequences to the citizen in his right to be secure in his liberty. When one violates the law and flees from justice, the Constitution of the United States, and the act of Congress thereunder, afford a complete remedy for his arrest and return. That occasionally the remedy may be too slow, and the guilty escape, cannot avail in this case and overcome what to us, upon careful consideration, seems a plain duty. And, therefore, it is now, this 2d January, A. D. 1885, adjudged, ordered and decreed, that R. N. Shaw, high sheriff of the county and keeper of the county jail, shall set at large and release from further detention Patrick W. Norton, now in his custody.

DAVID L. KREBS,  
*President Judge, Forty-sixth Judicial District, Pa.*

STATE OF NEW YORK.

EXECUTIVE CHAMBER, }  
ALBANY, December 13, 1884. }

*In the Matter of the Charges against Alexander V. Davidson,  
Sheriff of the City and County of New York.*

A motion having been heard in this proceeding on behalf of the respondent to dismiss the charges herein, on the ground that the same were not verified; and it having been thereupon determined that the charges were insufficient for the reason specified; and since such determination, the said charges and the specifications having been again presented to me duly verified;

I do hereby require Alexander V. Davidson, the respondent above named, to answer the said verified charges, a copy of which is herewith served on him, and file his answer with me at the Executive Chamber, within ten days after the service hereof on him.

GROVER CLEVELAND.

To ALEXANDER V. DAVIDSON, *Sheriff of the City and County of New York.*

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LETTER OF RESIGNATION.

STATE OF NEW YORK.

EXECUTIVE CHAMBER, }  
ALBANY, January 6, 1885. }

*To the Legislature:*

I hereby resign the office of Governor of the State of New York.

GROVER CLEVELAND.



## APPENDIX.

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### STATEMENT

OF

### PARDONS AND COMMUTATIONS OF SENTENCE

Granted by the Governor

*DURING THE YEAR 1884-5.*



## P A R D O N S.

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January 4, 1884. Adam Bellinger. Sentenced May, 1879; county, Herkimer; crimes, burglary and larceny; term, ten years; prison, Auburn.

This pardon was granted upon the recommendation of the Judge who sentenced and the District Attorney who prosecuted the convict, and at the solicitation of many of the best citizens of the county of Herkimer, who assured me that the prisoner, after his plea of guilty, was instrumental in securing the conviction and punishment of other criminals; that he had always evinced penitence for his offense, and that in their opinion he would, if restored to society, thereafter lead an honest, decent life.

These representations were made from such a satisfactory source that I was led to believe the ends of justice had been sufficiently answered in this case by the imprisonment already suffered.

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January 12, 1884. Thomas A. R. Webster. Sentenced May 27, 1881; county, New York; crime, obtaining money by false pretenses; term, one year and six months; prison, Sing Sing.

An appeal was taken in this case and the conviction affirmed. The convict has been in prison six months. The conviction arose out of the sale of certain land, and it was charged that the convict made false representations concerning the same, to induce the complainant to purchase it. He seemed to have been convicted upon the theory that

after the deed was prepared, he read it to the grantee, and in so reading the same, represented that by the deed the land was located on the north side of a certain railroad, when, in point of fact, correctly read, the description would have located it on the south side of said railroad.

It now appears that, notwithstanding the word "south" was in the deed instead of "north," and, notwithstanding the word "north" may have been incorrectly read aloud from the deed by the prisoner, instead of "south," yet the remaining description and other boundaries contained in the instrument fixed the location of the land on the north side of the railroad; and it is quite clear that any court must have so determined. This being so, the grantee acquired by the deed exactly the land he bought of the prisoner, which he had inspected and which he held for two or three years before making complaint.

I had also before me an affidavit of a party not sworn on the trial, but who was present at the time the deed was delivered, by which it appeared that the prisoner did not read the deed aloud to the grantee at all.

Nine of the jurors who convicted him petitioned for his release.

The judge who wrote the opinion in the appellate court, affirming the conviction, in a letter to me, referring to the other parts of the description, which showed that the premises were located on the north instead of the south side of the railroad, wrote :

"If these facts had been presented upon the trial it would have altered the case, and the use of the word south instead of north, in the description, would be immaterial; and I do not now see how the conviction could be upheld."

The prisoner's rights seem to have been very badly cared

for on the trial, and I was entirely satisfied, after a patient examination of all the facts that his pardon should be granted, with a restoration to citizenship.

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January 15, 1884. Henry L. Hay. Sentenced, October 8, 1875; crime, rape; term twenty years; prison, Auburn.

I have carefully read all the testimony taken upon the trial, and a mass of letters, petitions and affidavits touching the case, which have been presented to my predecessor and to myself, and have arrived at the conclusion that the convict ought to be pardoned.

The prosecutrix was but eleven years old, and the crime was alleged to have been committed on the fifth day of May, 1875, in the woods, as she was returning to her parents' home from a village not far away. She was accompanied by a younger brother, from whose side she was taken, and who stood near where the offense was committed.

Her testimony is very indefinite and unsatisfactory as reported in the stenographer's minutes of the trial; but I gather from it she had known the convict, having a few years previously lived near him. It was about a week after the occurrence before she told her parents that she had been ravished, and then stated that she did not know her assailant; but that he wore sandy whiskers around his face. The prisoner was arrested in July following, upon a warrant issued for a person unknown, but described in said warrant as a man of medium size, with sandy whiskers. In the meantime the prisoner remained in the neighborhood, where the crime was the subject of public discussion. He was very well known to the sheriff who had the warrant, and to the father of the little girl. Before the arrest

was made, the girl and her little brother were brought into the presence of the convict to identify him if possible. The girl, after a little hesitation, said he was the man who assaulted her, but the brother said he was not. Upon the trial the prosecutrix identified the convict, but was very positive that the person who committed the crime was a tall man with long sandy whiskers all around his face. Her brother was not sworn at all. A witness testified that he saw the children pass along the road in the direction of the woods, and that the prisoner was following twelve or fifteen rods behind them, but it appears from the evidence taken on the trial and such as has been produced to me since, that the fact by which this witness fixed the day when he saw the prisoner, had no existence.

A witness for the defense testified that she saw the children pass at about the date of the commission of the offense, and a short time after a man following, who was not the prisoner, whom the witness well knew, but who answered the description the prosecution gave of her assailant. Other testimony was given by the last three witnesses, whose character and integrity are abundantly vouched for, which, if true, established an *alibi* for the prisoner. Positive proof was given that the prisoner at the time the offense was committed had no beard, while some witnesses testified that he had.

The prisoner's reputation was not good, and he was impeached on the trial. I am inclined to think this fact had more to do with his conviction than it ought.

But it is not necessary in this case for me to determine that the jury erred in convicting the prisoner upon the proof before them.

It is quite apparent to me that the case was determined against the prisoner upon the finding that he, on the day the offense was committed, wore a sandy beard. No other finding, in my opinion, would support the verdict.

In addition to the testimony taken in court to the effect that on the 5th day of May, 1875, the convict had no beard, I have before me evidence not produced upon the trial, which to my mind conclusively establishes that proposition.

Another fact is most satisfactory. Since he has been in prison his beard has been allowed to grow, and its color proved to be a very pronounced black. This is certified to me by the chaplain of the prison, the judge who sentenced the convict, and who visited him since his incarceration, and by a confidential clerk attached to the Executive Department, who also saw him in prison.

A petition, numerously signed, certifies that it is the opinion of the petitioners and a majority of the people in the neighborhood where the crime was committed, that the prisoner is innocent.

He has now been imprisoned for more than eight years upon a conviction based, as I am satisfied, upon mistaken identity. I am convinced that I should not only release him from imprisonment, but restore him to citizenship.

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January 26, 1884. Henry H. Harrison. Sentenced, December 29, 1874; county, New York; crime, robbery in the first degree; term, twenty years; prison, Sing Sing; transferred to Auburn.

This convict is a colored man, absolutely without relatives or friends, who was convicted for robbing a colored woman of fifty cents. He represents that he is a native of

Hayti. He had for many years before his arrest been a sailor, and was a stranger in the city of New York, where the ship upon which he was employed had lately arrived.

During his imprisonment his conduct has been such that he has gained the good will and confidence of all the prison officials and they represent him to be one of the best prisoners they have ever had in charge, having given no occasion for the slightest reprimand.

For a number of years he has had charge of the cooking in Auburn prison, and has uncomplainingly and regularly been in the kitchen between three and four o'clock in the morning, where he has worked until about seven in the evening. He seems to have made every possible effort to improve his ignorant condition while in prison, and has gladly availed himself of every means of instruction.

These facts are represented to me as the result of inquiries and an examination of the case made at the prison for my information.

The good conduct of the convict, if maintained, would entitle him to a discharge on the 29th day of April, 1887. The aggregate of the extra time he has worked more than the hours of labor ordinarily exacted from convicts by the rules of the prison amounts to about three years and seven months.

It seems to me that the extra labor this friendless man has performed as prisoner, his ready observance of prison rules and regulations, his steady efforts to gain the rudiments of an education and the determination he seems to have formed to hereafter lead an honest life, furnish reasons for his pardon which appeal strongly to the justice as well as the generosity of the State.

February 11, 1884. George C. Crager. Sentenced September 20, 1882; county, Oswego; crime, bigamy; term, two years; prison, Auburn.

This convict has, by exemplary behavior since his imprisonment, gained the good opinion of all the prison officials, who appear to believe that he is genuinely repentant and determined, when permitted, to regain a good standing in society. By his good conduct he has earned such a deduction from his sentence as would have entitled him to his discharge in the month of May in the present year.

His last marriage, constituting the crime of which he was convicted, was contracted with a highly reputable and Christian young lady, who has, with astonishing love and devotion, maintained her loyalty to the convict, and who has been the object of extreme sympathy in the community where she lives. A child, the issue of her marriage with the convict, and which seems to have been her only solace and comfort, has just died, and she pleads with me that in her new and dire affliction her husband may be present at its funeral. Many kind-hearted people have interested themselves in her behalf, and join in her petition.

The cases are so numerous in which my duty and obligation to the public constrain me to resist appeals like this, I am glad to believe that, without prejudice to the interests of society, I may, in a substantial way, show my sympathy for this young afflicted wife by releasing to her the short remainder of the term of imprisonment which her husband owes the State.

February 16, 1884. John I. Moran. Sentenced December 24, 1883; county, New York; crime, assault and battery; term, two months; prison, New York Penitentiary.

This pardon was granted on the following grounds:

It appeared to my satisfaction that the convict, previous to his conviction, had borne a good character, and had been a hard working man.

From an examination of all the surrounding facts and circumstances in the case, I felt constrained to believe that the time already served by the convict had amply answered the demands of justice, and I therefore determined to grant the pardon applied for.

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February 19, 1884. Joseph Dunn. Sentenced September 30, 1880; county, Erie; crime, receiving stolen property; term, five years; prison, Auburn.

This convict, with three other parties stole a sum of money from a drunken man. He pleaded guilty to complicity in the offense and was sentenced to imprisonment for five years, the longest term which the statute permitted. His companions were sentenced to shorter terms, though, from all the facts I can learn, they appear to have been equally guilty. By good conduct in prison he has earned all the deduction from his sentence which the law allows, and his term would have expired on the 1st day of May, 1884.

I have seen a number of letters which this young man has written to his parents, in which he acknowledges the justice of his punishment, and evinces a determination to lead an honest life upon his discharge. I am impressed with the belief that the reformatory purposes of punishment have been answered in this case. His former employer

has written to me that if discharged now he can again enter his service.

In view of all the circumstances, I am of the opinion that the remission of the short time which yet remains of his sentence, will have a tendency to encourage him to improve the opportunity afforded to redeem himself from the consequences of his crime.

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February 21, 1884. Homer D. Skinner. Sentenced March 3, 1881; county, Schuyler; crime, arson third degree; term, seven years; prison, Auburn.

An application for the pardon of the convict was denied in June, 1883, but upon a re-examination of the case and a further presentation of facts, I think the prisoner should be released.

Owing to the fact that a number of fires had occurred in the village of Watkins, the trustees offered a reward "for any person detected and convicted of burning a building in the village."

The offer of this reward attracted the attention of a disreputable fellow, not then living in Watkins, but who came there for the purpose of bringing about a state of facts that would entitle him to a share of the reward offered. He found a ready accomplice in the person of a deputy sheriff of the county of Schuyler, and I have no doubt they conspired to create a fire, a culprit, a detection and a conviction for the purpose of obtaining the reward.

Homer D. Skinner, the convict, was a young man, the son of respectable parents, but beyond all parental restraint — an idle, shiftless, intemperate creation of the village groggeries — one of a class easily recognizable and far too numerous.

His love of drink and his idle and profitless way of life

suggested to the conspirators the ease of making him the culprit. For a number of days he was plied by them with liquor and kept in an intoxicated condition. In the meantime their plans were hardly concealed. Indeed, it now appears that more than one person outside of the conspiracy knew that arson was to be committed, and that the convict was to be accused.

On the night the fire occurred the convict sat in a saloon grossly intoxicated and sound asleep. One of the projectors of the arson, with difficulty, roused him and fairly dragged him, in a stupid, dazed condition, in the direction of the building to be burned. A few moments afterward the cry of "fire" was heard, and the man who conducted the prisoner to the scene, ran away, while the deputy sheriff, from a convenient point of observation, rushed upon the convict and arrested him under circumstances that secured his conviction. I have before me the affidavit of a person to the effect that, at the request of this officer, he helped carry the convict, after his arrest, to the jail, and that he was so much intoxicated they "had to take hold, one on each side of him, and hold him up and partially drag him along to the jail."

In the light of all the facts before me, I have very grave doubts as to the convict having set the fire at all. If he did, I am entirely satisfied that he was not a free moral agent, but the senseless instrument of those who certainly were responsible for the crime.

It appearing to my satisfaction that he became a victim to a wicked conspiracy, through his intemperate habits, I have determined to grant his pardon upon the condition that he wholly abstains from all intoxicating beverages for the term of five years from his discharge.

March 7, 1884. Horace White. Sentenced April 25, 1883; county, Clinton; crime, burglary, first degree; term, ten years; prison, Clinton.

The convict went to a saloon which he had been in the habit of frequenting in the village of Plattsburgh, about ten o'clock at night, with a companion. Finding the place closed, they raised the window and took from the saloon a few bottles of lager beer of the value of less than fifty cents. The proprietress of the establishment slept in a room above it, and heard and saw the culprits, who, as I understand the case, had at the time some conversation with her, apparently making no effort to conceal their identity.

The young man who was with White pleaded guilty to petit larceny and was imprisoned for a short time in the county jail; but the counsel for the convict advised him to demand a trial, insisting that the transaction was merely a trespass. This course resulted in his conviction of an offense for which the highest penalty was imprisonment for the term of ten years.

The judge who pronounced the sentence, the district attorney who prosecuted the indictment and every member of the jury who rendered the verdict earnestly recommend that the convict be now pardoned. I have no difficulty in arriving at the conclusion that if the conviction was proper, it is peculiarly a case in which the rigors of the law should be tempered and modified by executive clemency.

March 7, 1884. David Murphy. Sentenced June 27, 1872; county, New York; crime, murder first degree; term, death; commuted August 8, 1873, to imprisonment for life; prison, Sing Sing.

The homicide was committed by a pistol shot, and in the midst of, or immediately following, quite a serious affray, between the convict and the deceased.

An appeal was taken to the General Term of the Supreme Court from the conviction of murder in the first degree, which was affirmed by both of the justices constituting the court, on the grounds that as matter of law they ought not to interfere with the verdict of the jury. Both wrote opinions. The chief justice, after reviewing the facts in the case, concludes his opinion as follows: "But while we think there is nothing in this case to justify this court in reversing the judgment, we feel bound to say that we think the clemency of the Executive may very properly be exercised in commuting the sentence to such lesser degree as shall be thought proper on a review of the evidence."

The associate justice, in his opinion, after commenting upon the evidence, says: "The statute anticipates the infirmities of nature by providing that a killing in the heat of passion, with a dangerous weapon, without intent to kill, shall be manslaughter in the third degree, and this case is one in which that verdict would, I think, have accomplished the ends of justice." And he concludes as follows: "For these reasons I concur with the chief justice that, although we cannot say positively that injustice has been done, the doubt which springs from an examination of the whole case, makes the suggestion proper that the executive clemency may safely be employed towards the prisoner."

The assistant district attorney, who tried the indictment

for the people, writes: "Upon a review of the case, I am satisfied that manslaughter in the third degree would have been the right verdict in this case. I, therefore, respectfully suggest that the sentence be reduced to what it should have been had that been the verdict of the jury."

The district attorney himself, who presented the case to the court on appeal, expresses his opinion as follows: "The judges, however, in their opinions, express the belief that while they cannot interfere with the findings of the jury, a verdict of manslaughter in the third degree would have satisfied the requirements of justice, and that the executive clemency might justifiably be exercised in reducing the punishment accordingly. With that view I concur."

Notwithstanding the opinions given above, of those so well qualified to speak of the merits of the case, I have read the evidence, and am surprised that a verdict of murder in the first degree was rendered. The severest punishment which could have been inflicted for manslaughter in the third degree was seven years imprisonment. The crime was committed April 17, 1872, and the convict has been in confinement ever since that day. He has been in prison since August, 1873. During his incarceration his conduct has been irreproachable.

In the year 1878, when a fire occurred in the prison storehouse, which afforded him an opportunity to escape, he rendered willing and valuable assistance in saving property belonging to the State. Such behavior should, I think, be recognized and encouraged, and this circumstance may well be considered as an additional reason why the clemency asked in this case should be granted.

March 13, 1884. William Emmerline. Sentenced May 18, 1883; county, Albany; crime, burglary, third degree; term, one year; prison, Albany County Penitentiary.

It is represented to me that the convict's mother has but a short time to live, and it is asked that he may be relieved from the five days remaining of his sentence, in order that he may be enabled to be with her in her last hours.

It is on this, and the further ground that this was the convict's first offense, and of his previous good character, that I have determined to grant the pardon applied for.

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April 7, 1884. Edward Jones. Sentenced August 14, 1879; county, New York; crime, grand larceny from the person in the night time; term, ——; prison, New York State Reformatory.

This convict was arraigned upon an indictment charging him with the offense of grand larceny from the person in the night time. He pleaded guilty to the indictment, and in consideration of his age and previous good character, he was sentenced by the court to the New York State Reformatory. It seems that at the time he pleaded to the indictment, the question was raised that the larceny was committed in the day time. The law was then such that if this offense had been committed in the night, the maximum punishment that could have been inflicted for the same would have been ten years' imprisonment; but if in the day time, the maximum imprisonment would have been but five years. Inasmuch, however, as the court had determined that he should be sent to the reformatory, from which it seems to have been expected that he would be released long before the expiration of either of these terms, the fact that the indict-

ment charged the graver offense was not deemed of much importance. Thus, under his plea of guilty to such an indictment, he was committed to the reformatory for imprisonment and reform. He reached that institution on the 16th day of August, 1879; on the 7th day of June, 1881, he was transferred by the managers of the reformatory to the State prison at Auburn as incorrigible. The effect of this was to consign him to prison for the term of ten years, less the time he had spent in the reformatory. But on the 20th day of June, 1882, having become insane, he was sent to the asylum for insane criminals at Auburn, and on the 18th day of October, 1883, having fully recovered, he was returned to the State prison, where he might be imprisoned for the remainder of a ten years' term.

I have had his case carefully investigated, and there is not the slightest pretext, nor is it claimed in any quarter that the offense to which he pleaded guilty was committed in the night time. On the contrary, the proof is positive that he was arrested immediately after the offense, about two o'clock in the afternoon. The judge who sentenced him writes that if he had sent him to prison he would not have fixed his term of imprisonment longer than four years.

The maximum term for his real offense is five years, and granting him commutation for good conduct while he has been in prison and the asylum, his imprisonment should have terminated on the 25th day of November, 1883.

This case furnishes a forcible illustration of the manner in which the merciful intent of the courts may sometimes miscarry when convicts are sent to the reformatory.

I have determined, in pure justice to this prisoner, to grant him the pardon which he asks.

April 24, 1884. Charles Johnson. Sentenced March 5, 1884; county, New York, crime, assault, third degree; term, three months; prison, New York Penitentiary.

I have read all the testimony taken upon the trial, and though the case seems to be without much extenuation, the sentence appears to be quite severe.

The wife of the convict is in a delicate condition and entirely destitute of means; a physician's certificate informs me that he deems it very important, in view of her near confinement, that her husband should be released; the judges who sentenced the prisoner express the opinion that the ends of justice will be fully answered by his liberation. I am satisfied that the facts in the case justify me in granting the application for his pardon.

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June 9, 1884. John Donohue. Sentenced May 9, 1884; county, Oneida; crime, assault third degree; term, six months; prison, Albany County Penitentiary.

This pardon was granted upon these grounds:

It appeared to my satisfaction that the prisoner previous to his conviction had been a hard-working, industrious man, and that this was his first offense; that he is a mason by trade, and has a family dependent on him for support; that his only opportunity of employment is during the mild season, and, if compelled to serve out the remainder of his sentence, his opportunity of earning subsistence would be lost during the entire year. His sentence was based principally upon the fact of his committing a contempt of court after conviction, and which was clearly excessive for the real offense for which he was arrested and convicted, and which was hardly deserved, even taking the contempt into consideration.

His pardon was recommended by the judge before whom he was sentenced, and several citizens of standing and character in the community who were thoroughly conversant with the circumstances of the offense.

It appearing that the convict has been somewhat addicted to the use of intoxicating drinks, this pardon is granted only upon the condition that the prisoner shall not become intoxicated at any time during the period of one year from and after the date of pardon."

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June 24, 1884. Elias N. Crow. Sentenced May 29, 1884; county, New York; crime, cruelty to an animal, to wit, a horse; term, six months; prison, New York Penitentiary.

This prisoner pleaded guilty on the 30th day of March, 1881, to an indictment in the General Sessions of the city of New York, charging him with cruelty to a horse. Sentence was thereupon suspended by the court upon the express condition that if the defendant should again violate the provisions of the statute relating to cruelty to animals, he was to be sentenced upon the indictment and his plea of guilty already entered.

The prisoner was engaged in a business which made necessary the use of a large number of horses in drawing trucks, and were let to others to be so used, and he has continued in that business up to the present time.

On the 5th day of May, 1884, he was again arrested, charged with the offense of permitting one of his drivers to use a horse which was suffering from a complaint called the "scratches." On this latter charge he was arraigned and pleaded guilty, and was thereupon sentenced to pay, and did pay, a fine of twenty-five dollars.

He was then, on the 9th day of May, 1884, sentenced upon the plea of guilty, which had been entered on the previous charge nearly three years before, to be imprisoned in the New York Penitentiary for the term of six months.

His pardon is now asked by a large number of citizens of the city of New York of high standing and respectability, who testify in unqualified terms to his integrity and good character, and their application is warmly indorsed by the district attorney and the judge who sentenced him to imprisonment. With these things before me, and believing from other representations, that the condition of the family of the prisoner appeals strongly for his liberation, that his business will be very much damaged, if not destroyed, by his imprisonment for the term of his sentence, and being fully convinced that the incarceration already suffered will prevent any future transgression of the law on his part, I have determined to grant him a pardon.

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June 26, 1884. Gerardus Reese. Sentenced June 16, 1884; county, Schenectady; crime, assault, third degree; term, two months; prison, Albany County Penitentiary.

It appears that the assault committed by the convict was in no sense aggravated, and the sentence imposed was out of all proportion to the offense committed. From a careful examination of the papers on file in this case, I am satisfied that the convict, who was unquestionably a sober, hard-working man, has already been sufficiently punished, and I am satisfied that the interests of justice will be subserved by his release at the present time.

July 3, 1884. Thomas Chestnut. Sentenced July 23, 1879; county, Westchester; crime, rape; term, ten years; prison, Sing Sing.

A reading of the most essential parts of the testimony, and conversation with the prosecuting officer, leaves in my mind much doubt whether the offense of rape was committed. After the trial and conviction of Chestnut, a further examination of the case and the character of the complainant seems to have given rise to the same doubt in the minds of the court and district attorney, for at the next term of the court the other parties indicted were permitted to plead guilty to an assault with attempt to ravish, and were sentenced to imprisonment for the terms of four years and six months, and four years respectively. These latter terms have expired.

There is no pretense that there is any difference in the guilt of all the parties concerned in the transaction.

I am entirely clear that this convict should be released. And my duty, I think, is made especially plain since I have before me the petition of every member of the court before which he was tried, and the district attorney who prosecuted him, asking for his release.

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August 4, 1884. Frederick Munter. Sentenced December 19, 1863; county, New York; crime, manslaughter, first degree; term, life; prison, Sing Sing.

In a moment of frenzy, caused by drunkenness and jealousy, the convict killed a woman to whom he professed to be devotedly attached and between whom and himself an engagement of marriage existed. As no trial was had, it is impossible to procure the facts attending the homicide with very much detail. It seems, however, that the murdered

women excited the jealousy of the convict to the highest pitch by receiving and encouraging the attentions of other suitors to her favor, and that having indulged heavily in drink, he killed his victim, he claims, while he was unconscious of his acts. It certainly appears that shortly after having regained his senses he surrendered himself to the officers of the law, and on being arraigned pleaded guilty to manslaughter. The crime he committed was an atrocious one, and I am assuming that there was no legal excuse for the same, nor any circumstances that necessarily mitigated the offense.

But he has now been actually imprisoned more than twenty years. His record for good conduct in prison is most satisfactory, so that if he had been sentenced for thirty-four years, the time allowed him for good behavior would so have reduced his time that it would have already expired.

This convict is a German, having no relatives in this country except a sister.

A petition for his pardon is presented, very numerously signed by many of the convict's fellow countrymen, who have investigated the case, and by a great number of very prominent citizens.

An arrangement has been made under which, if released, he shall have immediate and permanent employment.

In view of all the circumstances, I am convinced that the ends of justice have been answered in his case by the punishment he has already received, and that if he is restored to society he will become a good citizen.

I have determined, therefore, to pardon his crime and release him from imprisonment.

September 4, 1884. Terrence Condon. Sentenced November 16, 1881; county, New York; crime, manslaughter third degree; term four years; prison, Sing Sing.

The term of this convict would have expired by reason of his good conduct in prison, in any event, November 16, 1884.

I find nothing connected with the commission of the offense or with the trial and conviction which in my opinion would justify me in interfering with this convict's punishment. But I have before me the certificate of the physician attending his father, to the effect that the latter is suffering from consumption in its most advanced stage, and that he will probably not live to exceed a month. This is accompanied by a statement of a clergyman that the father is so low with his disease that he has already been prepared for death, according to the rites of his church. It is further represented to me that his constant desire is to see his son again before he dies.

Upon these facts, I have determined that the State can, without sacrificing the cause of justice, remit the remaining two months and twelve days of this convict's sentence for the sake of administering, perhaps, the last earthly comforts to an almost dying father.

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September 4, 1884. Peter Swenson. Sentenced February 6, 1874; county, Kings; crime, murder second degree; term, life; prison, Sing Sing, transferred to Clinton.

The convict is a Swedish sailor who had been in this country but a few days when he committed the homicide which resulted in his conviction.

His pardon is recommended by the judge who sentenced him, and by the district attorney who prosecuted the indictment. His conduct in prison has been excellent, and the

circumstances attending the homicide are such as to satisfy me that he has already been abundantly punished for the offense he committed. The facts, as I apprehend them, so nearly justify the act that, fortified by the opinion of the court and district attorney, I fear that I am doing tardy justice in granting a pardon to this friendless man.

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September 15, 1884. Charles H. Rudd. Sentenced March 1, 1879; county, Oneida; crime burglary first degree; term, ten years; prison, Auburn.

The following reasons have been filed:

The sentence of the convict's brother was commuted by my predecessor, so that he has been at large for some time. I know of no circumstances that distinguish the two cases as to the degree of guilt.

This convict has behaved well in prison, and his release is asked by a large number of respectable citizens who were his neighbors prior to his conviction. The present district attorney of the county where he was tried, from such knowledge of the facts of the case as he has been able to obtain, indorses the propriety of his pardon. In addition I have before me a letter from the physician of the prison stating that his health is very poor, that he has been running down for the last year, that in spite of medical treatment he constantly loses flesh and strength, and expressing fear that he cannot live to the end of his term.

The convict has a family, and I am assured bore a fair reputation prior to his conviction. His original term, with the deduction which he has earned for good conduct, will expire September 3, 1885.

In view of all the facts, I have determined to remit the remainder of his sentence by granting him a pardon.

September 17, 1884. William Blumenauer. Sentenced March 26, 1884; county, New York; crime, assault, second degree; term, two years and six months; prison, Sing Sing.

The offense of this convict consisted in wounding, with an ordinary pocket-knife, the complainant, in the midst of a scuffle, which had been preceded by a violent quarrel.

From statements made by the district attorney, I gather that the complainant, who was a larger and stronger man than the convict, was the assailant, and that, though there was no actual justification for the use of a weapon, the circumstances surrounding the affair mitigated, to a great extent, the conduct of the prisoner.

A very large number of his neighbors and acquaintances certify to his quiet and peaceable disposition and industrious habits, and ask that he be released from further imprisonment.

Eight of the jurymen by whom he was convicted join in the petition for his pardon.

The convict was engaged in the milk business prior to his conviction, and has a wife and a number of children. I am satisfied that this continued imprisonment will result in the destruction of his business, and reduce his family to actual want.

The district attorney who prosecuted him, upon consideration of the facts adduced upon the trial, and those which he has since learned, expresses the opinion that this is a proper case for clemency.

This convict has been in prison nearly six months, and I am satisfied that the ends of justice will be subserved and this offender against the law sufficiently punished, if he be now pardoned.

September 18, 1884. John Cody. Sentenced October 4, 1882; county, Westchester; crime, rape; term, seven years; prison, Sing Sing.

This convict appears to be without friends to push his application for a pardon, but I am entirely satisfied, upon investigating the case, that the proof of force necessary to constitute the offense was wanting. This is apparent from the evidence of the prosecutrix upon the trial, and from her testimony subsequently given upon the trial of other parties charged with the convict.

The district attorney who prosecuted the indictment frankly writes: "Taking the entire evidence I had, at the time of the conviction, a serious doubt of the guilt of the convict, and still entertain such doubt. So far as I can learn, the previous character of the convict is not good. My doubts arise from the fact that it was not made to appear that sufficient force was used by the convict to constitute the crime."

The judge who sentenced the convict writes: "Had the question of fact been determined by the court, the convict would not have been convicted, and I do not believe the offense charged was committed."

I have no hesitation in granting a pardon to this prisoner, who has, I believe, been unjustly confined for nearly two years, and with the pardon I shall restore him to citizenship."

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September 20, 1884. James Larkin. Sentenced March 11, 1879; county, Queens; crime, burglary; term, ten years; prison, Sing Sing; transferred to Clinton.

The conduct of this convict in prison has not been good.

The judge, before whom he was tried, writes that the proof against him was chiefly the testimony of an accomplice, cor-

roborated in some particulars, and that the jury accompanied their verdict with a strong recommendation for mercy. He does not, however, advise a pardon.

The district attorney who prosecuted the indictment, represents that the evidence was very conflicting, and upon the whole case he recommends clemency.

He further states that the jury, after being out about two hours, made a written agreement that if the prisoner was sentenced for more than one year they would immediately apply for a pardon, and it was under such circumstances that a verdict of guilty was reached.

A written statement is before me signed by all the jurors, setting forth that they had great difficulty in coming to a conclusion that the convict was guilty, and that the agreement referred to by the district attorney was signed by them.

It is apparent that the condemnation of this convict was the result of a reprehensible bargain by the jurors, and an utter and complete disregard of the important duty which a jury is sworn to perform. When the liberty of a citizen is made to depend upon a traffic or wager in the jury room, concerning the manner in which the court may perform its duty in the matter of sentence, criminal trials become grim travesties of justice.

I regard the verdict of the jury, in this case, as invalid and outrageous, and after an imprisonment, which I deem legally unjust, of more than five years, a pardon is granted to the convict, with full restoration of all his rights of citizenship.

September 22, 1884. Richard Unger. Sentenced February 21, 1883; county, New York; crime, burglary third degree; term, three years; prison, Sing Sing; transferred to the State Asylum for Insane Criminals.

This convict is only twenty years of age, and this is his first offense.

A few months since he was transferred to the State Asylum for Insane Criminals, where he now is.

The medical superintendent of that institution certifies to me that his insanity assumes the type of melancholia, and that he is absolutely harmless; that this disease is complicated by advanced and rapidly progressive consumption, and that his condition is one of enfeeblement and emaciation, and he is of the opinion that his case is absolutely hopeless. He further states that he doubts if he can live a month.

It further appears that his family are able to provide him with a good home and suitable treatment.

In view of the above facts, I have determined to grant him a pardon, in order that his mother, who is now waiting for him at the asylum, may take him home to die.

[The above convict died October 28, 1884.]

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October 7, 1884. Miles Tunny. Sentenced July 16, 1884; county, Albany; crime, breach of the peace; term, five months; prison, Albany County Penitentiary.

It appears to my satisfaction that this convict's wife now lies dead, and has left two young children totally without protection, care and support; that the community is in favor of his release under the circumstances, and the recorder who sentenced him strenuously urges his pardon on these grounds.

In view of these facts, I have determined to remit the

remainder of the convict's term, inasmuch as he has already served nearly three months of his sentence, in order that he may be present at his wife's funeral, and to enable him to care for his motherless children.

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November 14, 1884. Robert W. Batting. Sentenced April 23, 1875; county, Ulster; crime, murder, second degree; term, life; prison, Sing Sing.

The crime was committed while the convict was under the influence of intoxicating drink to such an extent as to fully justify the belief that he was unconscious of his acts. This is no actual excuse for his crime, and I am inclined to think that all the palliation that circumstance offered was allowed him by the jury in fixing the grade of the offense. In this particular case, however, I think it proper to consider the convict's condition at the time of the homicide, in connection with the other facts presented upon his application for clemency.

The character of the convict up to the time of his arrest had been fair, and with an occasional over-indulgence in drink, he had been industrious and steady; and he had been regarded by his acquaintances and neighbors as quiet and inoffensive. The petition for his pardon is numerously signed by the best citizens of the locality where he lived and where the crime was committed; and his former employers offer to again take him into their service immediately upon his discharge.

He has a wife and five children whose condition appeals strongly to every humane sentiment.

Since his incarceration his conduct has been most exemplary. He has yielded willing obedience to all prison rules,

and has shown a disposition uncomplainingly and submissively to suffer the penalty the law has imposed upon him for his crime.

With but these considerations before me, I might still hesitate to interfere with the action of the jury and the judgment of the court in this case. But the judge who pronounced the sentence earnestly recommends a pardon, and in addition, I have had presented to me the further fact that since the convict's imprisonment, when a desperate and savage assault was made by a number of prisoners upon one of their keepers, the convict, at great personal risk, interfered, and, in all probability, saved the keeper's life.

Such service to the State, and such a disposition to aid in the maintenance of prison discipline, should, in my opinion, be recognized and encouraged. Considering this, and all the other circumstances of the case, I have determined to restore the convict to liberty and to his family. But, because his great crime resulted from his drunken condition at the time of its commission, his pardon is granted upon the express condition that if he again becomes intoxicated the same shall be deemed forfeited.

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November 26, 1884. William McGovern. Sentenced, August 14, 1884; county, Onondaga; crime, assault, third degree; term, six months; prison, Onondaga County Penitentiary.

The justice before whom the convict was tried represents that the injuries inflicted by the convict upon the complainant were not of a serious nature, and he expresses the opinion that, having served over one-half of his term, the ends of justice will not suffer if the convict is now released.

It further appearing to my satisfaction that the convict's mother has but a short time to live, and that she and her

aged husband need his care and support, I have determined to grant the pardon applied for.

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November 28, 1884. George Witherhead. Sentenced, October 17, 1884; county, St. Lawrence; crime, drunkenness and disorderly conduct; term, six months; prison, Onondaga County Penitentiary.

The offense of which the convict was found guilty was not a serious one, and it further appears that he was never previously charged with or convicted of any crime.

He is young, and the only son of a widowed mother.

A report from the warden shows that his conduct while in confinement has been most exemplary, and the Penitentiary physician certifies that he is suffering from consumption, and is at present confined to his bed, having recently had a severe hemorrhage, and he expresses the opinion that he cannot survive if kept incarcerated during the remainder of his term.

For these reasons I have determined to grant the pardon applied for.

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December 1, 1884. Thomas Reilly. Sentenced, June 6 1884; county, Ulster; crime, malicious mischief; term, nine months; prison, Albany County Penitentiary.

This convict was pardoned on the ground that the Attorney General of the State, in an opinion, held that the sentence imposed by the court was wholly illegal and void.

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December 5, 1884. John Bowes. Sentenced, September 13, 1879; county, Wyoming; crime, arson first degree; term, life; prison, Auburn.

The convict was confined in the jail at Warsaw, Wyoming county, awaiting trial upon certain charges for which he

had been indicted, when it was discovered that a hole had been burned partly through the side of the cell in which he was incarcerated. It appeared that this was done by means of lighted charcoal, which was drawn over or pressed against the wood in such manner as to destroy its fibre, while precautions appear to have been actually taken by the convict, in this attempt to prevent the destruction of the building. It seems to me to be plainly evident by the direct, as well as the circumstantial evidence adduced upon the trial, that the intention was to make, by means of the burning above described, a breach through which an escape might be effected.

Under a number of decisions of the courts, and as the law then existed, this state of facts did not constitute the offense of arson in the first degree, of which the prisoner was convicted, an element of that crime being an intention to destroy the building set on fire; and when any evidence that such might not have been the motive was given, the jury should have been directed to pass upon the question of intent, finding the prisoner guilty only in case they arrived at the conclusion that his purpose was to destroy the building.

While it appears to me that the evidence negatives the theory that such an intent existed, I am still satisfied that if I am mistaken as to the conclusive force of the testimony in this case, I ought to pardon this convict upon the following statement contained in a letter lately received from the judge before whom he was tried :

“It is now suggested by the friends of the prisoner that the jury would have been justified in finding from the evidence that he set fire to the jail as a means of securing his escape, and not with the intention of burning down the

building, so as to bring the case within the rule as laid down in the case of *The People v. Cotteral* (18 Johns., 115), where it was held that if the firing was for the purpose of effecting his escape only, that the prisoner was not guilty of the crime of arson. I think, with the friends of the prisoner, that the jury would have been justified in taking that view of the case. I do not recall to mind at this time that the jury was so instructed, and my impressions are that their attention was not called to the rule of law as laid down in the case referred to."

If the evidence was altogether with the prisoner upon the question of intent, as I am convinced, he should not have been convicted; and if the jury were not permitted to consider such evidence as was concededly in the case, tending to the prisoner's advantage upon that question, he was not justly dealt with.

In either view I deem it my duty to release him.

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December 17, 1884. Joseph P. Wall. Sentenced, February 18, 1878; county, New York; crime, manslaughter in the first degree; term, fifteen years; prison, Sing Sing.

It appears that the convict, until a comparatively short period preceding the commission of the offense, had borne an exemplary character, had worked steadily at his trade as a confectioner, and had in all things faithfully cared for his family.

For some time prior to the homicide the convict's wife had been in the habit of drinking, and at times became so much under the influence of liquor that she grossly neglected her family.

In time the convict became addicted to the use of drink, and coming home one night in a drunken state and finding his wife lying on the floor in the same condition, as

it appeared upon the trial, he attempted to arouse her, and not succeeding, kicked her in such a manner that her death resulted in a day or two. It did not appear that he had the slightest intent to cause her death, or to inflict serious injury.

For this act the prisoner was convicted in the Court of Oyer and Terminer of manslaughter, and sentenced to fifteen years' imprisonment.

He now, in his application from the prison, acknowledges the justness of his sentence, but pleads that he may be released in order that he may be able to provide for his old mother and children, who have been thrown upon charity.

Judge Davis, who imposed the sentence, now writes :

“ He was at the time grossly intoxicated, and probably did not intend her death, nor fully apprehend the danger to which his brutality exposed her. Exemplary punishment was imposed because crimes of that nature were very frequent at that time. I have since learned that Wall's general character, with the exception of his addiction to drink, was quite good, and that when sober he was industrious and kind to his family. During the last summer I visited the prison at Sing Sing, and saw and conversed with Wall. I was also informed by the warden that his conduct in prison had been at all times exemplary. He is submissive, industrious and at all times attentive to the duties imposed upon him, and thoroughly repentent of his crime. He manifested great anxiety on account of his mother, who is old and poor, and his three children, now in the care of the Protectory, all of whom need his care and support. His case is one in which a pardon may be properly granted. I therefore unite in recommending your excellency to pardon him.”

For the reasons above expressed, I have determined that justice will in no wise suffer, but rather be promoted if the convict's application for pardon be granted.

December 18, 1884. Charles C. Bates. Sentenced, December 13, 1882; county, Delaware; crime, bigamy; term, —; prison, State Reformatory.

As a general rule I have declined to interpose clemency in behalf of inmates of the State Reformatory.

Under the statute governing its organization and management, and the rules made by the board of managers in pursuance thereof, executive clemency in behalf of its inmates should be sparingly exercised.

In the case of this inmate, however, I deem it my duty to order his release.

It appears that at the time of the commission of the offense for which the inmate now lies imprisoned, he was only twenty years of age, ignorant of the consequences of his act, under the influence of liquor, and I am satisfied that he had no intention of violating the laws of the State.

While these considerations do not, perhaps, furnish reasons why the inmate should be entirely excused from the consequences of his act, yet they do unquestionably give ground for a mitigation of his punishment.

He has a wife and child, who have, since his incarceration, been provided for by the charity of his father, and furnished a home in the latter's family.

It now satisfactorily appears that further imprisonment of the inmate will be likely to result in a permanent separation between him and his wife, and a dissolution of all family ties, which, it is so important should be maintained in their integrity; and it is conceded that the inmate is both able and willing to provide for his family.

I am satisfied that further imprisonment will be of no advantage to the inmate nor to the community.

As a further reason for the inmate's release, I have before

me the letter of the judge who imposed the sentence, in which he says :

"Under the statute I felt called upon to send him to the Reformatory. If the court had been called upon to fix the term of imprisonment, it would not have exceeded one year, under all the circumstances. If that had been done he would now have been entitled to his discharge. It does not seem that the ends of justice will be promoted by his further confinement."

The inmate has already been actually incarcerated for a period of over two years, an ample punishment for the offense committed, under all the circumstances surrounding it.

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December 19, 1884. Harvey J. Totten. Sentenced December 17, 1883; county, Livingston; crime, grand larceny in the second degree; term, two years; prison, Auburn.

This convict was convicted in the county of Livingston of the crime of grand larceny in the second degree, in having misappropriated funds in his capacity as agent of a sewing machine company, and sentenced December 17, 1883, to two years' imprisonment in Auburn prison.

I am exceedingly averse to interposing clemency in behalf of those who, acting in a fiduciary capacity, violate the trust reposed in them.

In the case of this convict, however, there seems to be sufficient ground for a mitigation of his punishment.

It is now represented to me by the convict's friends that previous to his conviction he had borne a good character; that his family are now destitute by reason of his imprisonment, and that the company was fully indemnified for the misappropriation, by reason of a bond given by the convict, with sufficient sureties.

The district attorney who prosecuted the indictment now writes :

"I believe the punishment already received sufficient, and that the public will not be injured by immediate clemency."

And the judge who imposed the sentence says :

"The court very reluctantly sentenced him to State prison. Convict is of a respectable family. I knew his father well. The punishment the court was compelled to impose is out of all proportion to the offense of which he was guilty, within the meaning of the Code. I think he ought to be pardoned."

The convict having already served over a year's actual imprisonment, I believe the ends of justice have been fully answered in his case. —————

December 19, 1884. George Lewis. Sentenced December, 6, 1883; county, Queens; crime, larceny; term, two years; prison, Kings County Penitentiary.

The crime consisted in the convict having taken the horse and buggy of a friend, driving off with them to a distant town, and endeavoring to dispose of the same at a low price, under what appeared to be suspicious circumstances. His former employer certifies that he heard the owner of the property repeatedly urge the convict to sell the same, and that he believes that he had no intention of committing a crime.

As grounds for his pardon, I have before me the petition of the jurors who convicted him, who say :

"While we could not conscientiously acquit, we feel that the circumstances fully warrant a commutation of sentence."

The district attorney who prosecuted the prisoner now writes :

"I feel that he entirely lacked the elements of which crim-

inals are made; he looked to me like a weak young man, one easily influenced. I am of the opinion that executive clemency may be the making of him, and concur in the judge's opinion."

The latter says: "I gladly unite in the application of the jury. The evidence showed that up to the time of the offense he was a person of good conduct and upright character. He had become addicted to intoxicating liquors to excess, and was in a drunken spree when he committed the theft. The sentence, which was the lowest I could impose, I think should be commuted to one year. Even six months would be sufficient. Such an act would probably save him for all future time."

His former employer now writes that he has full confidence in him, and that should he be released he will immediately take him into his employ.

As the convict has already served over one year's actual imprisonment, I have determined, in view of the reasons above set forth, to grant the pardon applied for.

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January 5, 1885. Daniel O'Brien. Sentenced October 3, 1884; county, New York; crime, assault in the third degree; term, six months; prison, New York Penitentiary.

This prisoner was convicted of an assault upon his wife which was not an aggravated one, consisting of but one not very severe blow. I am in favor of sternly dealing with wife-beaters; but in this case the punishment the prisoner has already suffered appears to be abundantly sufficient, and his pardon is earnestly recommended by the court before which he was tried. The wife, who was the complainant against him, begs that he be restored to her and his children, who need his support.

The action of inferior magistrates in disposing of cases of this description is frequently characterized by a strange lack of good judgment. Sentences are pronounced under stress of passion or prejudice, grossly disproportionate to the offense, and long imprisonment is unreasonably imposed upon a husband and father, leaving those dependent upon his labor to be supported by charity, or at the public expense.

Those condemned by these inferior tribunals are generally poor and friendless men. This fact entitles them to the just care of the court, and at the time of conviction their condition and that of their families should be considered, to the end that justice might be tempered with humanity and a wise discretion.

I have no doubt of the propriety of granting a pardon in this case.

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January 5, 1885. Mary Hoey, *alias* Lizzie Ellen Wiggins. Sentenced April 14, 1882; county, New York; crime, petit larceny from the person; term, five years; prison, New York Penitentiary.

This convict is a notorious criminal and professional thief. She is now confined in the New York Penitentiary under a sentence of five years, imposed for pocket-picking; and this is represented to be only one of her many exploits of a similar kind.

She appears to have been formerly connected in crime with a notorious receiver of stolen property in the city of New York, named Mandelbaum, who, until lately, has successfully followed her vocation, and, by means thereof, grown quite rich.

This convict, after her conviction of the offense for which

she is now imprisoned, took an appeal and was released on bail. She went to Boston pending the appeal and was sentenced to prison there. About this time she determined to expose the receiver above mentioned, which she did, and thus enabled a prominent dry goods firm to recover judgment against Mrs. Mandelbaum for a large sum, being the value of goods of which they had been robbed, and which had been received by her.

The conviction in the city of New York having been affirmed, she was brought from Boston to serve her sentence upon such conviction. She and her husband have since that time furnished the authorities in New York such information and evidence as led to the finding of a number of indictments against Mrs. Mandelbaum, upon which she has been arraigned, and has given bail for her appearance. She has, however, forfeited her bail and fled to Canada.

I am strongly urged by the late district attorney of the city and county of New York, in whose term the indictments were found, and by the members of the Boston firm above mentioned, as well as by a number of the most prominent dry goods firms in both cities, to pardon this convict, upon the ground that she has rendered important services in the administration of the criminal law, in the pursuit of Mrs. Mandelbaum and the destruction of her business, which, while it flourished, subjected an important part of the business community to constant and extensive depredations.

If the prisoner was under indictment and untried, the district attorney, with the consent of the court, could release her upon her furnishing evidence to convict a more guilty and important criminal. But having done this while under sentence, the only resort by way of compensation is to the pardoning power. It seems to me the same principle should

govern me as would be applied by the court when asked for permission to release or abandon prosecution before conviction.

It is alleged upon this application that the convict is disposed to reform, and leave her vicious ways, but I have not faith enough in such representations to base a pardon on that ground.

I think, however, that I should be guided by the advice of the district attorney, who, under his oath as an officer charged with the execution of the law, insists that the cause of justice will not suffer, but rather be promoted by the pardon of this criminal.

She has now been actually imprisoned in the New York Penitentiary for nine months.

Her pardon is granted upon the condition that she shall at all times, when required by the district attorney of New York county, appear in court and testify upon the trial of any of the indictments now pending against Fredrika Mandelbaum, and if she shall at any time fail and neglect to so appear and testify, when required, the said pardon shall be void, and her sentence be revived and restored in full force and virtue, and she may be remanded to serve the remainder of the term which she would have been compelled to serve but for this pardon.

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January 5, 1885. Joseph P. Farley. Sentenced April 17, 1878; county, Niagara; crime, murder in the second degree; term, life; prison, Auburn; transferred to Clinton.

At the time of his conviction he was quite young, barely nineteen years of age.

It appears that the crime was committed under somewhat peculiar circumstances. The convict was walking with two

young girls, when they were met by three men, who jostled or pushed against the girls and their escort. This action resulted in a fight, during which the convict, in great passion, cut the deceased with a pocket knife in such a manner as to cause immediate death.

It does not appear that there was the slightest intention on the part of the convict to cause death, or, in fact, to inflict serious injury.

The district attorney expresses the opinion that the convict had the knife in his hand, open, before he met the assaulting party.

From the testimony of those whose opinions are entitled to respect, it clearly appears that the previous character of the convict has been good.

I have before me the petition of all the jurors now living, who convicted the prisoner, asking for his pardon, and this is supported by a large number of the most respectable citizens of the county.

The district attorney who prosecuted the prisoner now writes :

"While the jury might, perhaps, have inferred a design on the part of Farley to cause death, yet I confess I would not have been surprised if the verdict had been one of guilty of manslaughter in the third degree, and I rather expected such a verdict. Indeed, I have been told by some of the jurors that the verdict would not have been for murder, had they not supposed that the punishment to follow would be virtually ten years' imprisonment."

The judge who imposed the sentence says :

"I think he was properly convicted upon the evidence; yet I then thought, and still think, that the mitigating circumstances which the law would not allow me to act upon, would at some future time, if his conduct meantime should not

oppose, make his case a proper one for favorable executive consideration. He was a mere lad, and the provocation which he received was such as it is a natural sentiment for such lads to resent. He was provoked to engage in a fight with the other lad and stabbed him. The intent to cause death was constructively imputable to him; yet the whole affair was so short and sudden, that the thought to cause death could have been but a momentary impulse. Assuming that his conduct in prison, now several years, has been good, I shall regard such a commutation of his sentence, as shall soon expire, as a wise exercise of executive clemency."

The warden reports the convict's conduct as most exemplary.

Inasmuch as he has already served a sentence of ten years, allowing for good conduct in prison, and from the considerations above set forth, I am clearly of the opinion that justice will be promoted by the pardon of the convict.

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January 5, 1885. Horatio S. Courtney. Sentenced March 5, 1883; county, New York; crime, grand larceny; term, four years and six months; prison, Sing Sing.

This convict, with two others, was connected in the robbery of a place of business. The offense and the perpetrators were soon discovered, and all three pleaded guilty to its commission.

For some time previous there had been a gang of young robbers called the "fire-alarm fiends," who started alarms of fire for the purpose of robbery, of which it was understood at the time of their conviction the convict and his companions were members. It was also made to appear that the convict was the chief offender in this, as in numerous other robberies, and it was on this ground that he received a sentence of four years and six months, while his com-

panions received sentences of only two years and six months each. These considerations, which were so prejudicial to the prisoner when sentenced, now clearly appear to have been based upon mistaken information.

It is now represented to me that the convict's previous character was good ; that this was his first offense ; that he had never been connected in any manner with the gang of thieves above referred to, and that he was not the chief offender in the commission of the offense for which he now suffers imprisonment.

I have before me letters from reputable persons, among whom are late employers, in which they speak in the highest terms of the previous character of the convict, and one of whom says he would not hesitate to give him employment.

The district attorney now writes that he has caused to be made a thorough investigation into the previous character of the convict and the circumstances of the offense, and he reports that he finds the claims of the convict's friends to be fully substantiated, and cordially recommends his immediate release.

Inasmuch as the convict has already served within two months of the full term for which his associates were sentenced, allowing for commutation for good conduct, I find no difficulty in reaching the conclusion that the pardon of this convict would be but an act of justice.

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January 6, 1885. Frederick Norton. Sentenced September 22, 1884 ; county, Oneida ; crime, assault in the third degree ; term, six months ; prison, Albany County Penitentiary.

The offense of which this prisoner was convicted does not appear to have been an aggravated one, and it seems by the letter of the justice who sentenced him, and who

now recommends his pardon, that the length of sentence imposed was governed more by a real or supposed indig-  
nity to the court than by the character of the offense itself.

It also appears that the previous character of the convict was good, and this was his first offense.

Inasmuch as the prisoner has a family to support, I am satisfied that having served nearly four months imprisonment for a very trivial offense, he should now be pardoned.

## COMMUTATIONS.

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January 5, 1884. Thomas Kearns. Sentenced March 2 1883; county, Rensselaer; crime, petit larceny; term, one year and \$150 fine; prison, Albany County Penitentiary.

Sentence commuted to one year's imprisonment in the Albany County Penitentiary, from March 9, 1883.

This commutation is granted on the following grounds:

It appears that the prisoner was convicted on his plea of guilty of stealing a carcass of mutton, valued at four dollars, in the day time and in the presence of a number of people, and that it was the first offense of which he had been charged or convicted.

The police justice before whom he was convicted stated that he had been sufficiently punished for the particular offense of which he was charged, and he would be satisfied if his sentence were commuted.

The county judge and district attorney recommend executive clemency. It is also recommended by a number of respectable citizens.

Taking these facts into consideration, and also the fact that his parents are old and need his earnings, I have determined that justice will not miscarry if the fine imposed is remitted.

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January 8, 1884. James Gilmartin. Sentenced May 23, 1882; county, Orange; crime, assault with intent to kill; term, two years; prison, Albany County Penitentiary.

Sentence commuted to one year, seven months and thirteen days actual time in the Albany County Penitentiary.

This commutation is granted upon the following grounds:

It is urged that the prisoner be liberated in time to attend the funeral of his father, who, it appears upon unquestionable authority, died the day previous to the date of this commutation.

The term of the prisoner would have legally expired within sixteen days by reason of good conduct in prison.

Taking these facts into consideration, and that his antecedents are entirely respectable, I have no hesitation in granting the relief sought by a commutation.

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February 2, 1884. Donato Magaldo. Sentenced February 23, 1869; county, New York; crime, murder in the second degree; term, life; prison, Sing Sing; transferred to Clinton.

Sentence commuted to twenty-five years from February 24, 1869.

This convict was convicted of murder in the second degree for a homicide, committed with a knife.

The testimony taken upon the trial, which I have carefully read, indisputably discloses the fact that the person killed crossed the street to the place where the convict was quietly standing, and engaged in an altercation with him, the two being entire strangers to each other. A number of witnesses testified that the deceased was making threatening demonstrations towards the prisoner, which would seem to justify him in supposing that he was in danger of bodily injury at the time the fatal blow was struck, and about an equal number of witnesses gave evidence that the deceased had turned away and was leaving the prisoner when he was stabbed. The jury seemed to believe, as they had the right to do, the latter version of the occurrence.

The convict is an Italian, and has a family in Italy. At the

time of the homicide he had been in this country but a short time, and when he was tried was entirely ignorant of our language.

I have before me a certificate of the chief officer of the Italian municipality where he lived, to the effect that during his residence there he lived a blameless life ; and on his trial evidence was given of his good character since he came to this country.

A number of years ago the officers of the prison where he is confined joined in a petition for his release, stating that his conduct in prison had been most exemplary, and a report just received represents that his conduct continues to be satisfactory.

A distinguished judge of the Court of Appeals, who, with a knowledge of the language of the convict and his Italian witnesses, heard these statements before the trial, and who has since read the evidence, asks for a pardon, and says that he is convinced "that the case is a proper one in which to ask executive clemency." In 1881 the district attorney of New York county, after an examination of the case, wrote : "I venture to suggest, however, that the imprisonment which the defendant has already suffered, is, under all the circumstances, sufficient punishment for the crime."

Previous applications for this man's pardon have been made to my predecessors, and refused. It seems that in 1872, while such an application was pending, information was asked by the Governor, of the Superintendent of Police in New York, as to the character and antecedents of the prisoner. A report was made by a so-called detective to his chief, which was forwarded to the executive, in which the following statement appears : "As to the character of Donato Magaldo previous to the above offense, I have

made an investigation, and find that he was known to the police as a very bad and dangerous man, and had been arrested for a similar offense previously. Captain Kennedy of the Sixth precinct, says he had known him for some years previous, and that he was a very bad and dangerous man, having been arrested for a felonious assault and battery some four or five months previous to above offense, but for some reason he never was brought to trial."

The above statement is now thoroughly impeached by the proof upon the trial, and an official certificate presented to me, duly authenticated, from the native land of the convict, by which it appears that he left there with his passport for New York, in March, 1867.

This feature of the case is adverted to as demonstrating the injustice that may be done by the representations of police officers lacking in character and conscience.

The crime of which the prisoner was convicted was committed with a weapon, the possession of which has prejudiced in my mind his application, I will not grant him the pardon he asks, but, in view of all the circumstances, I have determined to commute his sentence to imprisonment for twenty-five years, with the usual deduction for good behavior. If he continues to behave himself well, he will be entitled to his discharge on the 23d day of May, 1884.

March 4, 1884. Charles Wilhelm. Sentenced January 15, 1880; county, New York; crime, forgery, third degree; maximum term, five years; prison, State Reformatory; transferred to Auburn January 19, 1880, as an "old convict."

William Anspeke. Sentenced March 13, 1879; county, New York; crime, forgery, third degree; maximum term, five years; prison, State Reformatory; transferred to Auburn August 3, 1882, as "an incorrigible."

Frank Leonard. Sentenced June 7, 1879; county, Tompkins; crime, burglary and larceny; maximum term, five years; prison, State Reformatory; transferred to Auburn October 30, 1882, as "an incorrigible."

Henry Wilson. Sentenced April 21, 1879; county, New York; crime, petit larceny from the person; maximum term, five years; prison, State Reformatory; transferred to Auburn October 30, 1882, as "an incorrigible."

James Watson. Sentenced October 19, 1881; county, New York; crime, attempting to commit petit larceny from the person; maximum term, two years and six months; prison, State Reformatory; transferred to Auburn January 8, 1883, on account of having been previously convicted.

Wallace Bell. Sentenced, May 14, 1879; county, New York; crime, grand larceny; maximum term, five years; prison, State Reformatory; transferred to Auburn January 8, 1883, as "an incorrigible."

These convicts having been originally sentenced to the New York State Reformatory, no limit was fixed by the courts to the term of their imprisonment. But by the provisions of the statute relating to this institution, such convicts may be discharged by the managers, under certain conditions; and, in case the discretion thus vested in the managers is not exercised, convicts committed to the reformatory may be imprisoned therein for the longest term provided by law as a punishment for the offense of which they were convicted.

Of course, the intention of the law was that persons convicted of crime, whose youth, or freedom from criminal habits and associations, gave promise of reformation, should not be classed and kept with old and hardened criminals, but should be committed to the reformatory, where they might receive instruction and encouragement, and that their discharge within the limit which the law had fixed for their crime should be dependent upon the progress they made towards reformation.

But it is also provided that the managers of this institution may, in certain cases, transfer prisoners to a State prison where, unless they are recalled to the reformatory, they are kept the balance of the longest term for which they might have been sentenced to prison.

This I consider entirely wrong. If a convict is to be confined in a State prison, the criminal courts should fix his term; and the discretion which may be, in such cases, exercised by the courts, should not be abridged nor vested in the managers of the reformatory.

And, to add to this injustice and this anomalous method of administering the criminal law, it has thus far been held, I believe, that the provisions of the statute, relating to reduction of a prisoner's term for good conduct, does not apply to such convicts as are transferred from the reformatory to the prisons.

The result is that an old offender, of previous bad character, is frequently sent to prison by the court, for a term much less than the longest time allowed by law, and through good conduct in prison, can earn a considerable commutation of his sentence; while a young man, convicted of his first offense, with good character and respectable surroundings, sent by the court to the reformatory,

for imprisonment and reform, may be doomed by the managers of this institution to finish the longest term which his offense permits, in the State prison, with no commutation for the most exemplary conduct.

The least that should be done for convicts transferred under the present law from the reformatory to prison is to allow them, for good conduct in prison, the same commutation on the remainder of the term for which they might be confined, dating from the day of their transfer, that they would be entitled to if that was the beginning of an original sentence to prison. I think the statute in relation to commutations for good conduct in prison permits this. If it does not it ought to, and I am glad that I have the power, in any event, to rectify such wrongs, by the interposition of a special commutation.

The conduct of the six convicts above mentioned, so transferred from the New York State Reformatory to Auburn prison, is reported by the warden of the latter institution to be good.

Making the deductions from their terms, which I believe them to have earned, all are now entitled to be discharged except two, whose terms under the rule adopted, will respectively expire on the sixth and eighth days of the present month.

I cannot now do what I regard full justice to all these convicts, but I have determined to approximate it as nearly as possible by commuting their terms to the eighth day of March, 1884, which is probably as early as the necessary documents can be perfected and forwarded.

March 27, 1884. Edward Feeney. Sentenced December 27, 1880; county, Niagara; crime, robbery, first degree; term, ten years; prison, Auburn.

Sentence commuted to imprisonment in Auburn prison for the term of five years, from December 28, 1880.

This convict was charged with, and convicted of, the crime of robbery in the first degree, together with John Shine, and the circumstances of the offense and the degree of guilt were precisely similar in each case. On November 16, 1883, the sentence of Shine was commuted by me to imprisonment for the term of five years, upon oral representations made to me by the district attorney who prosecuted the indictment, and upon the recommendation of the judge who passed the sentence and numerous other respectable citizens who were familiar with the circumstances of the offense. An application having been made for executive clemency, and in order, therefore, that equal justice may be done, I have determined to commute the sentence of this convict to a like term of five years, which, if his conduct continues good, will entitle him to be discharged July 27, 1884.

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April 11, 1884. Angenette B. E. Haight. Sentenced February 25, 1884; county, Madison; crime, murder in the first degree; term, —, to be executed April 18, 1884.

Sentence commuted to imprisonment in the Onondaga County Penitentiary for the term of her natural life.

I have examined the facts in the case and have no doubt of the justice of her conviction. The sentence of death necessarily followed such conviction under the provisions of the criminal law.

While there is naturally a feeling of repugnance against the execution of a woman, I am by no means satisfied that in

the present condition of the law, which prescribes the punishment of death for murder in the first degree, females should be exempt from such punishment solely on account of their sex. But in this particular case, having made a full investigation of the condition of the condemned, I find that she is advanced in years, and a report of a medical examination, made by my direction, discloses that her bodily ailments and infirmities are such that it is quite likely that her life will not be of long duration in any event.

I have determined, therefore, to commute her sentence of death to imprisonment for life.

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May 1, 1884. Wallace L. Darbee. Sentenced May 8, 1879; county, Erie; crime, rape; term, twelve years; prison, Auburn.

Sentence commuted to four years, eleven months and nineteen days actual imprisonment, which will terminate May 5, 1884.

This convict, at the time of his conviction, was concededly in poor health. His long incarceration has aggravated the malady from which he was suffering, necessitating his removal to the hospital. The prison physician expresses the opinion that it is not unlikely that fatal results may soon be expected unless some change in his surroundings are given.

It is on this, and the ground of the long sentence imposed, and which the district attorney himself, who prosecuted the indictment, deemed excessive, taking all the facts and surrounding circumstances into consideration; and it further appearing to my satisfaction that all reformatory objects of the prisoner's punishment have been fully accomplished, I deem it my duty to interpose clemency in this case.

May 3, 1884. John B. Griffin. Sentenced March 17, 1884; county, Dutchess; crime, murder in the first degree; term —, to be executed May 9, 1884.

Sentence commuted to imprisonment in Sing Sing prison for the term of his natural life.

The condemned was, with two other parties, indicted for murder in the first degree. The homicide was committed by the means of a cartridge of dynamite, which was thrown through the window of a house in which were the deceased and several others. It is quite clear that the motive for the crime was a feeling of revenge towards one or more of the occupants of the house because of information which had been furnished of the commission of another offense by the parties indicted. Of the three, Griffin, the first one tried, was convicted of murder in the first degree. A day afterwards, and at the same court, one of the other indicted parties was tried, and upon the same evidence was convicted of murder in the second degree and thereupon sentenced to imprisonment for life. The last of the three accused of the crime then pleaded guilty of murder in the second degree, and was also sentenced to imprisonment for life.

There is not a particle of difference in the guilt of these three men. It is conceded that Griffin did not, with his own hand, throw the explosive into the house, but that it was done by one of his companions. This circumstance, while it does not palliate his participation in the crime, certainly does not aggravate it. The judge before whom the trial was had, and the district attorney who prosecuted the indictment, joined in advising me that, in their opinion, the same punishment should be meted out to all these convicted men. A large number of citizens ask that the punishment of the only

one of them sentenced to death be commuted to imprisonment for life.

There is here presented a notable illustration of the infirmity of all human laws for the punishment of crime, and the necessary imperfection of their administration. The difference between life imprisonment and death as penalties for violated law is immeasurable. And yet, on the same facts, the life of one criminal is forfeited by the verdict of a jury, and the next day another is spared by the same instrumentality.

I consider this a case in which it is my clear duty to commute the sentence of death to imprisonment for life.

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May 16, 1884. Abraham Meyers. Sentenced April 19, 1877; county, Monroe; crime, robbery in the first degree; term, twenty years; prison, Auburn.

Sentence commuted to seven years and one month, actual imprisonment in Auburn prison, from April 21, 1877, which will end May 20, 1884.

This convict has already served within a day or two a full term of eleven years, allowing the commutation, which he has earned for good conduct in prison, a term which, in the opinion of the district attorney who prosecuted the indictment, is amply sufficient for the offense committed. This ex-official says that he now believes the time has fully arrived for the release of this convict, and that he is enabled to say that the judge who pronounced the sentence had, previous to his decease, expressed the opinion that a considerable reduction of sentence should be allowed the prisoner. It is represented that the convict is advanced in years and in feeble health, and that further imprisonment, in his present condition, would result in unnecessary hard-

ship. The convict has near relatives living in the west, who are both able and willing to provide him with a home for the remainder of his life, and to which he is to be removed upon his discharge from prison. In view of all the circumstances, I am fully satisfied that the vindication of the law does not require this convict's longer imprisonment.

---

May 20, 1884. Thomas Waldron. Sentenced March 31, 1883; county, Erie; crime, assault second degree; term, five years; prison, Auburn.

Sentence commuted to one year and five months in Auburn prison, from April 3, 1883.

This convict was convicted of an assault upon a young girl with an intent to ravish. He was a teacher in a school for boys in the city of Buffalo, and prior to his accusation had the esteem and confidence of all who knew him. It is claimed that he is innocent of any crime, and that the evidence produced against him was entirely untrustworthy, and affidavits have been presented to me tending to establish the latter proposition. After an examination made under my direction, by an agent specially employed for that purpose; I am not satisfied that the convict is free from guilt; but such examination has brought to light certain facts which the rules of evidence excluded upon the trial, but which I think are properly submitted upon this application. Upon a careful consideration of the testimony upon the trial and after giving due weight to the facts, which such subsequent examination has developed, I am so impressed with doubt as to the convict's guilt of the crime for which he was sentenced, that I have determined to interpose in his behalf. I cannot grant the pardon asked for, because I am satisfied that he was guilty of indecent assault, or, as it is

now termed in law, an assault in the third degree. If he had been convicted of this offense, he might, as a maximum punishment, have been imprisoned for the term of one year, or been sentenced to pay a fine of \$500. The character of this offense, and the circumstances attending its commission, are such as to render it difficult to avoid strong prejudices against the convict. But I conceive it to be an important duty of the executive to exercise clemency when he believes that justice has miscarried. And I apprehend, if his conscience is satisfied in a given case, that is all he needs to justify his conduct, since he alone is responsible for the proper use of this extensive and delicate power. This convict has been imprisoned more than a year. I have determined to commute his imprisonment to one year and five months. This, with continued good conduct on his part, in prison, will entitle him to a discharge on the 7th day of June, 1884.

---

May 29, 1884. Don Child. Sentenced January 27, 1882; county, New York; crime, false pretenses; term, three years and \$250 fine; prison, Sing Sing.

Sentence commuted to two years and four months actual imprisonment in Sing Sing prison, from January 28, 1882.

It appearing to my satisfaction that the court in imposing sentence was misled as to the degree of guilt of the parties concerned in the commission of the offense, and in giving the convict the same sentence as was imposed upon his associates, on the theory that he was equally guilty, I have determined to relieve him of the fine which was imposed, in addition to his term of imprisonment, in order that his punishment shall be more in accordance with what seems to have been his degree of guilt.

June 23, 1884. Thomas Boland. Sentenced December 5, 1879; county, New York; crime, violation of the election law; term, two years; prison, Sing Sing.

Sentence commuted to imprisonment in Sing Sing prison for the term of one year and six months from March 27, 1883.

This convict was indicted with one Hall for a violation of the election laws, and upon conviction therefor was sentenced to the State's prison at Sing Sing for the term of two years. His co-defendant, Hall, on a like conviction before another judge, was sentenced to be imprisoned in the same prison for the term of one year and six months. They both entered upon their terms of imprisonment on the same day. By good conduct in prison they have both earned the reduction of sentence allowed by law, and Hall will be entitled to his release on the 26th day of June, 1884.

An application was made to me some months ago for the pardon of Boland, based upon a previous good character, and certain circumstances connected with the condition of the family, which appealed strongly to my sympathy; and the judge who pronounced his sentence joined in said application. I could not see my way clear to grant the pardon asked for; but I examined the cases with great care, and it must be acknowledged that there is not a particle of difference in the criminality of the two convicts. My conclusion was to commute the sentence of Boland to one year and six months, being the same term for which Hall was sentenced. This will entitle him to his release, if his conduct continues good, with Hall, on the 26th day of June, 1884. That date being now near at hand, I have forwarded to the prison the papers necessary to carry out this purpose.

September 11, 1884. Cornelius Driscoll. Sentenced November 23, 1883; county, Albany; crime, assault first degree; term, two years; prison, Albany County Penitentiary.

Sentence commuted to imprisonment in the Albany County Penitentiary for the term of one year, from November 26, 1883.

The petition for the convict's release was presented by the president of the village and various other town and village officers. I am informed by the judge who sentenced him that he was the least aggressive of those concerned in the commission of the offense, and he expresses the opinion that the application, in view of the condition of his wife and family, is entitled to generous consideration. His imprisonment has left his wife with no means of providing for a number of children but her labor, aided by public charity. My investigation of the case has led me to the conclusion that the ends of justice will be answered by a commutation of the sentence of this convict to one year. This, with continued good behavior on his part in prison, will entitle him to his discharge on the 21st day of September, 1884.

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September 11, 1884. Charles Taschenbrecker. Sentenced February 14, 1881; county, Erie; crime, robbery; term, ten years; prison, Auburn.

Sentence commuted to five years' imprisonment in Auburn prison, from February 16, 1881.

This convict, with two others, was jointly indicted for robbery in the first degree. His companions offered to plead guilty to a lesser offense, which was accepted, and each received short sentences, which have long since expired. The court would have been willing to receive a similar plea from the convict, but his counsel refused to allow him to

plead guilty to such offense, and he was thereupon convicted of the crime charged in the indictment. It appears to my satisfaction that the previous character of the convict has been good, and that he had been a hard working young man. It was also shown that he was no more guilty than his companions. The judge and district attorney unite in asking that his sentence be commuted, as a matter of justice, to a term of five years, and I am entirely satisfied that this should be done. If his conduct continues good, he will be entitled to a discharge September 15, 1884.

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September 15, 1884. Frank Jelly. Sentenced May 26, 1868; county, Chautauqua; crime, arson, five indictments; terms, seven, four, four, seven and seven years respectively; prison, Auburn.

Sentence commuted to twenty-six years and ten months imprisonment from June 2, 1868.

At the time of his sentence the convict was quite young, and undeniably of weak intellect, easily influenced by bad associates and surroundings.

It is now claimed that he is not guilty of all the charges to which he pleaded guilty, but I do not purpose to base my action in his case upon that allegation.

He has been in prison more than sixteen years. His conduct during that time has been exceptionally good, and he has exhibited the most encouraging symptoms of contrition and evinces a determination to improve himself in every way.

His father is quite aged, and since his son's imprisonment he has removed to the city of Chicago. His condition in life is such that instead of being able to care for his son, he needs the latter's assistance.

My information has led me to believe with the judge who sentenced the convict, that "if a person could be found who would care for and influence him, he might be properly set at liberty."

I have corresponded with a humane citizen of Chicago, whose standing is an abundant guaranty that his assurances will be carried out, who has agreed that if the convict is released and sent to that city he will provide him with employment and have a supervision over him

I am so convinced that under this arrangement the convict will become a good and valuable citizen, that I have determined to commute his sentence to twenty-six years and ten months. This with continued good conduct on his part, will entitle him to a discharge on the 26th day of the present month, prior to which time the plan for his care and employment above referred to can be perfected.

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December 16, 1884. Samuel Casper. Sentenced April 19, 1877; county, Monroe; crime, robbery in the first degree; term, fifteen years; prison, Auburn.

Sentence commuted to twelve years, from April 21, 1877.

The offense of which these prisoners were convicted was robbery. The circumstances attending the commission of the crime were such as well might arouse indignation, and I am not inclined to find fault with the verdict of robbery, though the evidence might better have supported the charge of larceny from the person. The affidavits which have been presented to me, tending to show that the prisoners did not commit the crime, fail to satisfy me that any mistake was made in their conviction.

But Brown, I am informed, is now more than sixty years of

age, and Casper was, at the time of the commission of the offense a young man, undoubtedly led into the crime by his older companions, and concededly the least guilty of all.

The conduct of the convicts in prison has been good.

Abram Myers, who was sentenced at the same time for the same offense, was, by commutation of sentence, released from imprisonment a number of months ago.

I cannot pardon these convicts ; but because their companion has been released, and because I am satisfied that the ends of justice have been answered by the imprisonment already suffered, I have determined to commute the sentences of each to the term of twelve years.

This, with continued good conduct on their part, will entitle them to be released on the 20th day of December, 1884.

These reasons apply to the case of Herman Brown—the next commutation following.

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December 16, 1884. Herman Brown. Sentenced April 19, 1877 ; county, Monroe ; crime, robbery in the first degree ; term, eighteen years ; prison, Auburn.

Sentence commuted to twelve years, from April 21, 1877. For reasons see case of Samuel Casper, next preceding.

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December 18, 1884. William A. Stone. Sentenced February 27, 1874 ; county, Madison ; crime, arson in the first degree ; term, life ; prison, Auburn.

Sentence commuted to seventeen years and six months' imprisonment in Auburn prison, from February 27, 1874.

These convicts were sentenced to imprisonment for life upon a conviction of arson in the first degree, in the county of Madison. Stone was sentenced on the 27th day of Feb-

ruary, 1874, and Woodford on the third day of March in the same year.

The offense consisted in setting fire to an old shed, which communicated with adjoining buildings, causing the destruction of a large amount of property, including a number of dwelling houses.

The convicts were intelligent young men, respectably connected, and up to their arrest for the offense of which they were convicted, they had neither of them ever been suspected of crime. I am unable to gather from the evidence that any such motive existed in the minds of the convicts as usually leads to the perpetration of an offense of this character.

But it clearly appears that for some time prior to the arson, these parties had been much addicted to intoxicating liquor, and were almost constantly together in shiftless drunkenness. From a position of respectability, which entitled them to the esteem of all who knew them, they gradually sank to a condition where their lives were aimless and useless. In this plight, it needed but the recklessness of intoxication to lead them thoughtlessly, and with no care for consequences, to commit the offense. I have never known a case where indulgence in drink was more completely and exclusively the cause of crime.

The contrition and penitence of these convicts, and the representations of their reputable friends and neighbors, who, with an unanimity very unusual, ask for their release, and express their belief that if permitted they will again become reputable and useful citizens, together with my belief that the influence of good early training and surroundings will reassert itself, incline me to extend clemency to these prisoners. And this course is earnestly recommended by the judge who sentenced, and the district attorney who prosecuted them.

I have determined to commute the sentence of each of the convicts to seventeen years and six months, which, with continued good conduct, will terminate the imprisonment of Stone on the 11th day of January, 1885, and of Woodford on the eighteenth day of the same month.

This commutation is granted, however, upon the express condition that the convicts shall each, hereafter, entirely abstain from drinking intoxicating liquors, and in case said condition is violated, their sentences shall be restored and revived in full force and effect.

These reasons apply to the case of Melvin D. Woodford — the next commutation following.

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December 18, 1884. Melvin D. Woodford. Sentenced March 3, 1874; county, Madison; crime, arson in the first degree; term, life; prison, Auburn.

Sentence commuted to seventeen years and six months' imprisonment in Auburn prison, from March 4, 1874.

For reasons see case of William A. Stone, last preceding.

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December 19, 1884. Patrick Nicholson. Sentenced October 23, 1868; county, New York; crime, murder in the second degree; term, life; prison, Sing Sing.

Sentence commuted to thirty years' imprisonment in Sing Sing prison, from October 27, 1868.

This convict, under advice of counsel, pleaded guilty to the crime of murder in the second degree, and was sentenced October 23, 1868, in the Court of Oyer and Terminer, in the county of New York, to imprisonment in State prison for the term of his natural life.

The prosecuting attorney, in a communication on file in

this department, writes that it is not entirely certain that the prisoner would have been convicted of any higher crime than manslaughter in the third degree, had he stood trial and been properly defended. While this opinion of the prosecuting officer throws some doubt upon the justice of the conviction, yet, on this ground alone, I am unwilling to interpose clemency in his behalf.

It is now urged, however, by the friends of the convict, that he is an old man; that his long term of sixteen years already served, in addition to his concededly previous good character, together with his uniform good behavior in prison, and his services to the State in promoting discipline and quelling disturbance, entitle him to some consideration at the hands of the Executive.

As to the claim of his having rendered important services to the State, I have before me a certificate from one of the principal officers of the prison, in which he says that the convict rendered important and special services in frustrating the attempt of certain desperate burglars to escape in 1875, and that he prevented a further escape in 1881, involving three professional criminals. He further states that the convict has often checked unruly impulses in his fellow-convicts, that he has always been found to be obedient, efficient and faithful in the trust reposed in him, that his influence has always been exerted in the interest of good discipline, and that his record is without a single black mark.

For the reasons above stated, I have determined to commute his sentence to the term of thirty years, with the usual allowance for good conduct, which, if his behavior continues to meet the approval of the prison officers, will entitle him to be discharged December 22, 1886.

December 20, 1884. Michael McCarthy. Sentenced December 14, 1881; county, Montgomery; crime, stoning a railroad train; term, five years; prison, Clinton.

Sentence commuted to four years' imprisonment in Clinton prison, from December 20, 1881.

This prisoner, who appears to be friendless, makes his application from the prison, and sets out that he purchased a ticket to make a journey upon a railroad; that when he got upon the train he was very much intoxicated, and so stupid that he did not know what he was about; that upon his ticket being demanded, he, not understanding what was wanted, refused to pay his fare, for which he was ejected from the train, and that at what he supposed to be an indignity, and in his anger at the conductor by whom he was ejected, threw a stone at the train.

In answer to an official inquiry, the district attorney says that he is inclined to think that the sentence was about twice as long as it should have been, and that this was pretty generally the sentiment of those who heard the trial.

The judge, in his communication, states that though the convict had a ticket, he thinks he did not realize that he had it; that probably the convict was not as bad as he supposed; that his intoxicated condition led him into the commission of the crime; that if he has shown due penitence and his conduct in prison has been good, law and justice will be satisfied with the punishment already imposed.

In view of the above statements, the fact that he received the full penalty of five years for his offense, and his good conduct in prison, as appears by the certificate of the warden, I am led to believe that justice will be fully

answered by a commutation of the prisoner's sentence to four years, which, if his behavior continues to meet the approval of his keepers, will entitle him to be discharged at an early day.

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December 20, 1884. Anthony Mahn. Sentenced May 17, 1867; county, New York; crime, murder in the second degree; term, life; prison, Sing Sing.

Sentence commuted to thirty years' imprisonment in Sing Sing prison, from May 18, 1867.

At the time of his conviction he was quite young, only about nineteen years of age.

The fatal act resulted from a street quarrel, in which were engaged several persons other than the convict and deceased. It is entirely clear that while the circumstances connected with the transaction do not furnish a justification for the convict's act, yet they do disclose such provocation as to present to my mind a mitigation of his offense.

The district attorney who prosecuted the indictment writes: "The facts, in my judgment, present manslaughter in the third degree."

It appears that deceased and convict had never met before, and the judge who imposed the sentence charged that the assault was not made with intent to cause death.

From the papers on file it appears that the prisoner's previous character was good, and that this was his first transgression of the law.

The officers of the prison where convict has been confined certify that his conduct, at all times, has been most exemplary.

In view of all the facts and circumstances surrounding

this case, and of the opinion of the prosecuting officer, I have determined that the ends of justice will be fully answered by commuting the sentence of this convict to thirty years, with the usual allowance for good conduct, which, if his behavior continues to meet the approval of the officers of the prison, will entitle him to be discharged

July 17, 1885.

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January 3, 1885. James Lumbard. Sentenced October 22, 1875; county, Oneida; crime, burglary in the first degree; term, eighteen years; prison, Auburn.

Sentence commuted to imprisonment in State prison for the term of fifteen years, from October 23, 1875.

Other parties who were tried and sentenced for the same offense formed a gang of burglars who committed many crimes in the county of Oneida of great boldness. This convict resided in the city of Utica with his parents, who were respectable people, and, so far as known, his only relations with these desperadoes consisted solely of a participation in the offense of which he was convicted.

Since his incarceration his conduct has been entirely satisfactory to the prison officials; he certainly evinces penitence for his crime, and since he has been in prison his father has died, which seems to have confirmed his determination to make amends, so far as he may be able, for the grief his criminal conduct has caused his family.

The judge who sentenced him appears to think that clemency may be properly exercised in his case.

But in the disposition of this case I am principally influenced by the application of many of the best people of the city of Utica, made on behalf of the convict.

Some of these have heretofore remonstrated against any

executive interference in the case of this convict; but they now come to me in person, as well as by letter and petition, and earnestly beg me to pardon this prisoner, expressing their belief that if released he will prove himself a reputable member of society.

I confess that I have been very reluctant to interfere with his sentence, but have determined to commute the same to the term of fifteen years, which, with continued good behavior on the part of the convict, will entitle him to be discharged on the 22d day of March, 1885.

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January 5, 1885. James E. Kelly. Sentenced October 23, 1871; county, Erie; crime, murder in the first degree; term, —, to be executed January 4, 1872; sentence commuted to imprisonment for the term of his natural life; prison, Auburn.

Sentence commuted to imprisonment in State prison for the term of thirty years from January 6, 1872.

I am entirely familiar with the facts of this case, having been sheriff of the county of Erie at the time of the commission of the offense and the convict's trial. He was a sailor, with very few friends or acquaintances, and usually quite, orderly and decent. In a frenzy, caused by intoxication, he stabbed a total stranger suddenly, and without provocation, overcome, apparently, by a blind and senseless delusion.

He always has claimed that he had no knowledge of his crime until afterwards informed of its commission, and this is the general belief in the community where the offense was committed. He pleaded no exemption from punishment, was free from bravado, and manfully accepted the consequences of his heinous act, with sincere sorrow and repentance.

The commutation of his sentence to imprisonment for life was procured at the solicitation of the judge who sentenced

him to death and the district attorney who prosecuted the indictment, and they both now strongly recommend that further clemency be extended to the convict. This is supplemented by a petition signed by eleven of the twelve jurors who convicted him, and by a number of the best citizens of Buffalo who are familiar with the facts of the case. The prison officials, in unusually strong terms, commend his conduct since his imprisonment, and the prison contractors for whom he has been employed, and by whom he has been trusted, in the heartiest manner plead in his behalf.

With all this, I am not willing to pardon this convict. He should, however, be permitted to see in the future a day when his contrition, uncomplaining submission to punishment, and good behavior, may be deemed a sufficient atonement for his offense, and restore him to the world and liberty.

I have, therefore, commuted his imprisonment from life to a term of thirty years, which, with continued good conduct on his part, will entitle him to be discharged March 5, 1890.

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January 5, 1885. Serephine Crevier. Sentenced October 20, 1871; county, Essex; crime, murder in the first degree; term, —, to be executed November 28, 1871; sentence commuted to imprisonment for the term of his natural life; prison, Clinton.

Sentence commuted to imprisonment in State prison for the term of thirty years, from December 5, 1871.

Previous to the homicide his character was good. This is abundantly established by the evidence upon the trial, and by the certificate of good citizens of Canada, where he was reared and his aged parents now reside, as well as many prominent people in the county of Essex, where he resided prior to the commission of the crime for which he was sentenced.

On the night of the homicide the prisoner was assaulted, thrown down and badly beaten. When free, he pursued his assailant with a knife. Being interrupted by one friendly to him, in his rage and fury, caused by the beating he had just received, and to relieve himself from the interruption of his friend, he cut him in such a manner that he died of his wounds.

There is no doubt that at the time the fatal blow was struck the convict was somewhat intoxicated and in the heat of the greatest passion.

He had no previous quarrel with the deceased, and all the facts appear to sustain the proposition that he struck without any design to effect death. He struck wildly, and apparently with no other intent than to free himself from what seemed to him an unjustifiable interference.

The warden and other officers connected with the prison, since his incarceration, testify to his uniform good conduct and quiet and obedient behavior.

He expresses such sorrow and penitence for his first and only crime as gives rise to the expectation that he will certainly hereafter refrain from any violation of the law.

The district attorney who prosecuted the indictment recommends that clemency be extended to the convict. It is also asked by a large number of respectable citizens who are acquainted with the facts of the case.

While I am of the opinion that the jury might, with more justice, have convicted the prisoner of manslaughter, and while I believe there was a condition of public excitement surrounding the trial which operated against him, I hardly feel justified in acting upon such opinion and belief to the extent of now granting a pardon.

The prisoner has already had extended to him executive

clemency, by which his life has been saved. In such cases further interference should be sparingly exercised. But in this application, though not intending to overrule judicial proceedings resulting in his conviction of murder; I feel entirely willing to assume the responsibility of giving this convict a chance for restoration to liberty.

His life sentence is therefore commuted to the term of thirty years, which, with continued good conduct on his part, will entitle him to be discharged February 4, 1890.

## COMPARATIVE STATEMENT,

Showing the number of applications for Executive clemency; also the number of orders granted in each year, from 1865 to January 6, 1885, inclusive, and the per centage to Applications and Convictions:

GOVERNORS.	Acts of clemency.	Original applications.	Per cent. to applications.	Convictions.	Per cent. to convictions.
Gov. Fenton, 1865 ..	153	278	55	45.053	.0033
Gov. Fenton, 1866 ..	194	452	42	38.334	.0050
Gov. Fenton, 1867 ..	142	440	32	41.046	.0034
Gov. Fenton, 1868 ..	153	400	38	49.913	.0032
Gov. Hoffman, 1869.	108	298	36	52.925	.0020
Gov. Hoffman, 1870.	120	400	30	52.739	.0022
Gov. Hoffman, 1871.	118	344	34	60.577	.0019
Gov. Hoffman, 1872.	157	600	26	48.020	.0032
Gov. Dix, 1873.....	55	242	22	50.242	.0010
Gov. Dix, 1874.....	95	362	26	65.343	.0014
Gov. Tilden, 1875...	100	350	28	63.689	.0015
Gov. Tilden, 1876...	160	456	35	66.271	.0024
Gov. Robinson, 1877.	111	380	29	56.275	.0019
Gov. Robinson, 1878.	174	402	43	64.754	.0026
Gov. Robinson, 1879.	211	492	42	64.141	.0032
Gov. Cornell, 1880 ..	56	226	24	70.330	.0008
Gov. Cornell, 1881 ..	19	180	10	72.441	.0003
Gov. Cornell, 1882 ..	20	126	15	78.969	.0003
Gov. Cleveland, 1883.	57	290	19	72.323	.0007
Gov. Cleveland, 1884.	62	466	13	75.000	.0008
*Gov. Cleveland, 1885.	8	...	...	.....	.....

\* To January sixth.

† Estimated.

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